

# CHECKLIST FOR APPROVAL OF CLASS ACTION SETTLEMENTS

## Sacramento County Superior Court Complex Litigation Department

**Department 22: Honorable Lauri A. Damrell**  
**Department 23: Honorable Jill H. Talley**

This checklist provides direction on the information and argument the Court requires to grant a motion for preliminary and final approval of a class action settlement. All parties are urged to carefully review the checklist and fully comply with each applicable item to ensure a prompt ruling from the Court. The motion should follow the same order as this checklist, as that is how the Court will review the motion.

I

### MOTIONS FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENTS

Parties seeking preliminary approval of a class action settlement must file a regularly noticed motion. Counsel must reserve a hearing date through the clerk for the assigned Complex Department before filing.

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**Department 23:** 916-874-5754 | dept23@saccourt.ca.gov

A motion for preliminary approval of a class action settlement should contain the following information. *(NOTE: all facts submitted for the court to consider must be provided through a declaration or other admissible evidence. All factual assertions must properly cite to evidence submitted with the motion. The court will not consider factual claims stated only in the motion.)*

1. A general summary of the litigation, including the identity of the parties and brief procedural history.
2. A copy of the Settlement Agreement signed by all parties (not only counsel).
3. The total settlement amount, including any non-cash consideration (and the value of any such non-cash consideration).
4. 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/or value of claims made by class members, with the remainder reverting to defendants (i.e., “reversionary”).

5. 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.
6. A detailed description of the key financial terms of the settlement, including the gross settlement amount, each deduction from the gross amount (attorney's fees, litigation costs, settlement administrator fees, incentive fees, and all other deductions), whether exact or in a "not to exceed" amount, and the net settlement amount.
7. In employment 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 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 independent responsibility.
8. Any affirmative duties or obligations that the proposed settlement places upon class members or class counsel and the reason for those obligations.
9. 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. The motion must also provide sufficient information and argument for the Court to conclude that the normal class certification prerequisites have been met. (Cal. Rules of Court, rule 3.769; *Amchem Products, Inc. v. Windsor* (1997) 521 U.S. 591, 625-627, accord *Carter v. City of Los Angeles* (2014) 224 Cal.App.4th 808, 826.)
10. 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 the parties were assisted by a mediator.
11. Discussion of the scope of the release provisions which will bind the class members and the defendants. The release must be fairly tailored to the claims that were or could be asserted in the lawsuit **based on the facts alleged in the complaint**. (*See Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 538-539 ["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 interest of the class.
12. If the class and release periods extend beyond the date of preliminary approval, explain why this is appropriate.
13. 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. (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129; *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010)

186 Cal.App.4th 399, 409.) This discussion should specify the maximum realistic recovery of each claim asserted in the operative complaint, defenses asserted by Defendant(s), a summary of the risks, expenses, and duration of further litigation if the settlement is not approved, and any other relevant factors justifying the amount offered in settlement.

14. A summary of any Private Attorneys General Act (“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 properly address the fact that an aggrieved employee may not opt out of the PAGA settlement. As a result, in many cases, a class action settlement that includes a PAGA settlement should also include two separate payments and releases.** (See *Amaro v. Anaheim Management* (2021) 69 Cal.App.5th 521, 541, fn. 5.) In addition, moving counsel must provide a copy of Plaintiff’s notice letter(s) to the Labor Workforce and Development Agency (“LWDA”) and evidence that the settlement was provided to the LWDA.
15. If the settlement is predicated on a payment plan or is predicated on defendant’s financial situation, admissible evidence of Defendant’s financial situation should be provided, including appropriate financial documents such as a balance sheet, statement of cash flows, and profit and loss statement.
16. If approval of the settlement of class claims is requested together with approval of non-class claims (such as PAGA claims), discuss why the amount allocated to non-class claims is fair to those affected. (*Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77.)
17. The estimated average amount that class members will receive as their share of the settlement distribution. In class actions alleging Labor Code wage and hour violations, the parties shall 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. Whether the settlement provides for a *cy pres* distribution 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 Controller’s Unclaimed Property Fund in the name of the intended recipient.) Explain why any *cy pres* distribution fulfills the purposes of the lawsuit or is otherwise appropriate. (*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 moving parties must also declare whether they have an interest in the *cy pres* recipient, including its governance.
19. Discussion of the claims administration and class notice process and procedures, as discussed more specifically below in “Class Notice Administration” and “Notice to the Class.”
20. The proposed fee award to class counsel, including an analysis as to why the fee is appropriate. A full lodestar analysis can be deferred until final approval. The moving papers should also provide information regarding any fee splitting agreement and whether the client has given written approval. (*Mark v. Spencer* (2008) 166 Cal.App.4th 219, RPC Rule 1.5.1; Cal. Rules of Court, rule 3.769.)

21. 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.
22. 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. Counsel must explain why a service enhancement is reasonable and what the class representative did beyond the expected service of a class representative. **In addition**, the class representative shall state via declaration or affidavit 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. General statements of “countless hours”, “potential stigma”, or “potential risk” are insufficient. (*Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 805-807; *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 412.) Specific to PAGA-only settlements, explanations shall be provided as to why an incentive award is appropriate. **A declaration from counsel alone is not sufficient.**
23. Description of the impact of the settlement on pending litigation, if any.
24. Moving party should avoid merely cutting and pasting from a previous motion. The Court in these Departments reviews several of these motions each month and can tell when the moving papers are remarkably similar to another motion filed by the same counsel in the past. The Court should be persuaded that Class Counsel is intimately familiar with the case at hand. In addition, typographical errors due to quick copy and pasting is more likely to cause approval delay as the Court must spend additional time comparing and verifying key terms of the agreement.

#### **CLASS NOTICE ADMINISTRATION**

*Class Notice issues pertaining to administration must be included in the Settlement Agreement and discussed in the motion. A copy of the proposed Notice must be attached to the Settlement Agreement as an exhibit.*

1. Identification of the claims administrator for settlement, how the services for the administrator were obtained, and why the bid for administration is fair to the class.
2. Counsel must provide the qualifications and experience of the Administrator, including evidence that the 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 settlement funds.
3. The anticipated costs of class notice, including printing, mailing, searches to update the class list, handling telephone calls from class members, etc.
4. Discuss how and when the administrator will receive the class list and whether the list will be updated by the administrator prior to the initial mailing by use of the National Change of Address Registry. Indicate how notices returned as undeliverable will be handled, as well as re-mailed notices, if any.
5. Identify the deadline for the initial issuance of notice to class members.

6. If publication notice will be given, identify the timing, locations, and manner by which notice will be disseminated.
7. State how and when payments will be processed.
8. Indicate whether there will be a settlement website. If so, the URL must be provided.
9. Explain how notice of final judgment will be given to the class. (Cal. Rules of Court, rule 3.771(b).)

## **NOTICE TO THE CLASS**

*The process and procedures pertaining to notice to class members must be included in the settlement agreement and fully discussed in the motion.*

1. A copy of the proposed written class notice, and a discussion of the procedures to be used for providing notice to the class.
2. 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.
3. Whether the notice should be provided in any languages other than English. If notice will be provided only in English, explain why this is sufficient.
4. Ensure the notice content complies with Cal. Rules of Court, rule 3.766(d). For wage and hour cases, the notice must indicate the specific amount the class member will receive, and how that amount was calculated. Where PAGA claims are at issue, the notice must include a separate breakdown for PAGA payments and explain that an aggrieved employee may not opt out of the settlement with respect to any PAGA claims. The terms of the release of claims must be reflected in the notice.
5. 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.
6. 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. The class notice should be consistent with the terms of the settlement agreement but **should avoid any commentary as to the merits of the settlement**. For example, the notice should **NOT** include a statement such as, "Plaintiff and her attorneys believe the settlement is fair, reasonable, and adequate and in the best interests of all Settlement Class Members." This language is unnecessary and may improperly discourage class members from objecting to the settlement.

7. The time limits and procedures regarding objection, opting out, claim forms (if applicable), and cashing a settlement should be clear and consistent in the moving papers and the class notice. The Court prefers no less than a 60-day opt-out/objection period and 180-day cashing period and requires the parties to justify shorter periods. The parties must confirm that class members who receive re-mailed notices will be given an extension for all relevant time periods.
8. Whether class notice and receipt of any objections or opt-outs will be handled by counsel or by a third party administrator.
9. Whether defendants have produced the class list (i.e., the names and addresses of class members) to plaintiffs' counsel or to a third-party administrator, or when the class list will be ready and produced.
10. 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.
11. Do not include language stating that class members may only be heard at final approval if they have complied with objections procedures or that they must use specific language to request exclusion. Generally, the Court will hear from any class members who attend the final approval hearing and ask to speak regarding their objections.
12. The Court does not accept CourtCall appearances. The Notice must notify Class Members that if they desire to appear remotely, they can join via the Department's zoom link or phone number and provide the following access information for the appropriate Department in the Notice:

**Department 27:**

To join by Zoom link: <https://saccourt-ca-gov.zoomgov.com/my/sscdept27>  
To join by phone: (833) 568-8864 / ID: 16120204632

**Department 28:**

To join by Zoom link: <https://saccourt-ca-gov.zoomgov.com/my/sscdept28>  
To join by phone: (833) 568-8864 / ID: 16039062174

**CONTENTS OF PROPOSED ORDERS**

1. A proposed order granting preliminary approval of the class settlement shall include:
  - a. A copy of the Class Notice attached as an exhibit and incorporated by reference.
  - b. If sent with the Class Notice, a copy of any Claim Form attached as an 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 proposed hearing date for final approval of settlement (to occur on a Friday at 9:00 a.m.). The briefing shall be filed in conformity with Code of Civil Procedure section 1005.

## II

### MOTIONS FOR FINAL APPROVAL OF SETTLEMENTS

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

1. An outline of the key financial terms of the settlement, including the gross settlement amount, each deduction from the gross amount (the requested attorney's fees, litigation costs, settlement administrator fees, incentive fees, and other deductions) in exact amounts, the net settlement amount, the number of class members, and the amounts that will be paid to participating class members.
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 and experience in class litigation generally, and litigation of the type that is the subject of the lawsuit).
  - 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. Hourly billing rates and hours worked shall be included for paralegals, as well as a statement of verification that the hourly rate is reasonable and usual for the services rendered.
  - f. Itemized details of expenses and costs for which reimbursement is sought, including expenses incurred since preliminary approval of the settlement. Counsel are 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. Charges for faxes and scans are typically disallowed. 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 invalid 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. A Proposed Judgment should not include a dismissal or any findings not contained in the Final Approval Order. (Cal. Rules of Court, rule 3.769(h).)