CHECKLISTS FOR APPROVAL OF CLASS ACTION SETTLEMENTS

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. The defining of the key financial terms of the settlement, including the gross settlement amount, each deduction from the gross amount (attorney 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.

2. A copy of the Settlement Agreement signed by all parties (not just counsel).

3. A declaration by counsel addressing how the settlement was reached, that the settlement was negotiated at arms-length, whether a mediator was used in reaching the settlement terms, whether discovery (formal or informal) was conducted, the type of discovery (formal or informal) conducted, and why the settlement is fair, adequate, and reasonable for the class.

4. The definition of the class and aggrieved employees, the class and PAGA periods and whether they exceed the statute of limitation period(s), and if yes, then why, the estimated number of class members and aggrieved employees, and if settlements 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. Whether the settlement amount is dependent upon the number and amount of claims made by class members, with the remainder reverting to defendants.

7. 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.

8. The estimated highest, lowest, and average amount that class members and aggrieved employees will receive as their share of the settlement distribution. In class actions alleging Labor Code violations ("Wage & Hour Cases") and PAGA, the total number of work weeks (or pay periods) and the estimated amount each class member and aggrieved employees will receive per work week (or pay period).

9. The proposed fee award to class counsel, including an analysis why the fee is appropriate, and whether the attorney fee and costs will be paid directly by defendants as part of the settlement, or whether the fee award and costs will be paid out of the settlement proceeds.

10. If the class is not already certified, then a declaration by counsel addressing the necessary findings for settlement class certification, i.e., the settlement class is sufficiently numerous and ascertainable, the plaintiff's claims are typical with the class, and common questions predominate. Also, a declaration by class counsel addressing the lawyer's knowledge and experience handling class actions and related complex litigation. Lastly, a declaration from each class representative stating what the representative did as services to the class and participation in the litigation, and his/her lack of conflict with any putative class members.

11. What claims are being settled, including any claims which are not specifically alleged in the class action complaint, and the scope of the release provisions which will bind the class members and the defendants.

12. Any affirmative duties or obligations that the proposed settlement places upon class members.

13. 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.

14. If there are related cases pending in other jurisdictions, what effect, if any, this settlement will have on the other actions.

15. A copy of the proposed written class notice, and its discussion of the procedures to be used for providing notice to the class, including if the class notice will be provided in any language other than English (e.g., Spanish), and, if not, the reasonable/justifiable reason why the class notice is only being provided in English (and the court will not accept cost as a reasonable excuse).

16. 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.

17. 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.

18. Whether class notice and receipt of any objections or opt-outs will be handled by anyone other than the third-party administrator.

19. If a claim form is being used, a copy of the proposed claim form, and a discussion of procedures for sending, receiving, and processing claims.

20. A proposed order granting preliminary approval of the class settlement which includes:

    a. A copy of the Settlement Agreement, Class Notice, and Claim Form (if being used) attached as exhibits and incorporated by reference.

    b. Findings that the settlement is fair, adequate, and reasonable, and in the best interests of the absent class members.

    c. Finding the Class is provisionally certified (if not previously certified).

    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 a filing of supplemental declarations by counsel and third-party administrators verifying proper service of class notice, and receipt of filing of written objections, and setting a schedule for any written response to objections, and submission for 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. The defining of the key financial terms of the settlement, including the gross settlement amount, each deduction from the gross amount (the requested attorney fees, litigation costs, settlement administrator fees, incentive fees, and all other deductions) in exact amounts, and the net settlement amount.

2. A table of the number of class members and aggrieved employees, the number who submitted a claim form (if required), the number of opt-outs, the number of objections, the number of returned mailings, the number of re-mailed notices, and the number of undelivered notices.

3. A memorandum of points and authorities supporting the award of fees and costs, including briefing on the propriety of the amount of fees sought:

    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. 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. Either the specific tasks performed on the case on behalf of the named plaintiffs and the class, and the hours spent on each task, or copies of time records/billing statements documenting the work performed and time spent.

    e. If fees or costs are sought for services by a person other than of one of the identified attorneys under sub-section (a) (e.g., paralegal, expert), then define that person's experience, reasonable fee/cost, and services provided.

    f. Itemized details for expenses and costs for which reimbursement is sought. Counsel is advised that the court views fees for Lexis and 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.)

5. A memorandum of points and authorities supporting any proposed "incentive" or "service award" to the named plaintiff(s), i.e., any payment to representative plaintiffs in addition to their proportional 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.

6. 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.

7. 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 expense incurred for providing class notice.

8. 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.

9. If there were objections to the settlement, a brief by class counsel responding to the objections.

10. 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.