

CHECKLISTS FOR APPROVAL OF CLASS ACTION SETTLEMENTS

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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. The Court will not grant preliminary or final approval without this information. The Court will not accept any declaration that states counsel "is unaware" of any other matters. Counsel must perform a diligent and reasonable search to determine if other matters exist throughout California.
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. Proof of Service of the Notice of Settlement to the LWDA and the initial LWDA letter must both be attached to a declaration or the motion.

18. 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.
19. Whether class notice and receipt of any objections or opt-outs will be handled by anyone other than the third-party administrator.
20. 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.
21. 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. That the court retain jurisdiction pursuant to CCP 664.6 to enforce the settlement.
 - g. 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.