

Client Alert

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Northern District of California Issues Procedural Guidance for Class Action Settlements

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The Northern District of California recently issued [Procedural Guidance for Class Action Settlements](#). The court notes that failure to address the issues in the guidance “may result in unnecessary delay, or even failure, of approval.”

The guidance covers a range of subjects, including some that may not be obvious from recent Ninth Circuit precedent. Notable points include:

PRELIMINARY APPROVAL

- Issues to be addressed in motions for preliminary approval should include:
 - any differences between the settlement class and the class certified if a litigation class has been certified, or any differences between the settlement class and the class proposed in the complaint if a litigation class has not been certified;
 - any differences between the claims to be released and the claims set out in the operative complaint; and
 - the likely recovery amount per plaintiff under the terms of the settlement and the potential recovery if plaintiffs were to prevail on each of their claims.
- Notice should include contact information for class counsel to answer questions and instructions on how to access the case docket via PACER (or in person).
- With respect to methods of notice, “[t]he envelope should be designed to enhance the chance that it will be opened. Notice should be supplemented by email notice if feasible.”

FINAL APPROVAL

- In addition to information about the number of valid claims, the number of opt-outs, and the number of objectors, a motion for final approval should include information about the number of undeliverable class notices and claim packets.
- In general, unused funds allocated to attorneys’ fees, incentive awards, settlement administration fees, and payments to class members should be distributed to the class pro rata or awarded to a *cy pres* recipient.
- All requests for approval of attorneys’-fee awards must include “detailed lodestar information, even if the requested amount is based on a percentage of the settlement fund.”
- All requests for incentive awards must be supported by “admissible evidence of the proposed awardees’ involvement in the case and other justifications for the awards.”

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