

FINAL APPROVAL OF CLASS ACTION SETTLEMENT

Department: _____

RE: _____

In reviewing your motion for final approval of class action settlement and motion for attorney fees and costs, the Court Orders further briefing on the items checked below. The additional briefing shall be due by _____, 20____. Your hearing date is _____, 20____.

NOTICE TO CLASS

- How was notice given?
- How many class members opted out?
- How many class members submitted a claim form?
- Explanation for the low response rate.
- Are there any objectors and, if so, please indicate the nature of the objections.
- Provide a response to the objections.

EVALUATION OF THE SETTLEMENT

- Need to provide "basic information about the nature and magnitude of the claims in question and the basis for concluding that the consideration being paid for the release of those claims represents a reasonable compromise." Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116, 133; Dunk v. Ford Motor Company (1996) 48 Cal.App.4th 1794, 1802
- Estimate of recovery to each class member.
- Valuation of injunctive relief.
- Explanation as to the why the number of class members has changed from the date of preliminary approval.

ATTORNEY FEES

- Need to provide a lodestar analysis. Consumer Privacy Cases (2009) 175 Cal.App.4th 545, 556-558. See also Dunk v. Ford Motor (1996) 48 Cal.App.4th 1794, 1809 ("Later

cases have cast doubt on the use of the percentage method to determine attorney fees in California class actions.”)

- Justification of the multiplier. Ketchum v. Moses (2001) 24 Cal.4th 1122, 1138-1139.
- Need to lodge billing records for Court’s review.
- Why the hourly rate is reasonable as compared to the community for similar work. PLCM Group, Inc. v. Drexler (2000) 22 Cal.4th 1084, 1095; Shaffer v. Superior Court (1995) 33 Cal.App.4th 993, 1002.
- Any agreement about how attorney fees will be paid, including fee splitting and whether the client has given written approval. Mark v. Spencer (2008) 166 Cal.App.4th 219; Ca. Rules of Professional Conduct, §2-200; Ca. Rules of Court, Rule 3.769.

COSTS

- What are the costs claimed?
- Details of the costs claimed.
- Explanation of why the costs are higher than previously estimated.

INCENTIVE PAYMENTS

- Need to provide declarations from class representatives.
- Incentive fee award to a named class representative must be supported by evidence that time and effort expended by the individual and a reasoned explanation of financial or other risks undertaken by the class representative. Clark v. American Residential Services LLC (2009) 175 Cal.App.4th 785, 806-807. See also Cellphone Termination Cases (2010) 186 Cal.App.4th 1380, 1394-1395.
- Explanation as to why the class representative enhancement is reasonable. Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles (2010) 186 Cal.App.4th 399, 412; Radcliffe v. Experian Information Solutions Inc. (9th Cir. 2013) 715 F.3d 1157, 1165.

CLAIMS ADMINISTRATION COSTS

- Need to provide declaration from claims administrator justifying the costs sought.
- Explanation of why the administration costs are higher than previously estimated.

CY PRES

- Why does such distribution fill 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; Nachshin v. AOL, Inc. (9th Cir. 2011) 663 F.3d 1034, 1038-1041; Dennis v. Kellogg Co. (9th Cir.2012) 697 F.3d 858, 865; Ca. Code of Civil Proc., §384.
- Declaration disclosing interests or involvement by any counsel or party in the governance or work of the cy pres recipient.

NOTICE

- How will notice of final judgment be given to the class. Ca. Rules of Court, Rule 3.771(b) (e.g. posted on claims administrator’s website)

PROPOSED ORDER AND JUDGMENT

- Proposed date for final accounting and, if applicable, a Final Distribution of Residual Funds
- Fails to note the injunctive relief.
- Proposed Judgment must not include a dismissal. Ca. Rules of Court, Rule 3.769(h).
- Order and Judgment must be in separate documents.
- The proposed judgment fails to specifically list the members of the class who requested exclusion and are not bound by the judgment.

OTHER INFORMATION

- _____

Date: _____, 20__

JUDICIAL OFFICER