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PERSPECTIVE

## Northern District releases guidance for class action settlements

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The Northern District of California comprehensively updated its Procedural Guidance for Class Action Settlements on Nov. 1, 2018, requiring increased disclosures for preliminary and final settlement approvals, and more transparency in post-distribution accounting. Failure to follow the guidance may result in delay or denial of settlement approval. Federal class action lawyers should be aware of the updated settlement approval rules in the Northern District of California, one of the busiest and most influential districts for class action litigation.

### 1. Preliminary Approval

The N.D. Cal. Procedural Guidance details 12 buckets of information (many with subparts) parties must provide to the court to obtain preliminary approval for a class action settlement, frontloading and expanding many of the required disclosures regarding the substance of the settlement, attorneys' fees and administrative issues. The guidance recommends parties to take these requirements into account "during settlement negotiations" and when drafting class notices.

Parties must provide the following information about the proposed settlement during the preliminary approval process:

- Settlement fund and allocation plan to class members;
- Any differences between the settlement class and the proposed or certified class, as well as differences between the original claims in the complaint and the claims to be released in the settlement;
- Process used to select the settlement administrator and anticipated administrative costs;
- Class notice that achieves "the best notice that is practicable under the circumstances;"



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- Process and instructions for opt-outs or objections;
- Cy pres recipients and potential conflicts;
- Attorneys' fees, including lodestar calculation, and incentive awards; and
- Lead counsel's past comparable settlements "in easy-to-read charts that allow for quick comparisons with other cases."

### 2. Final Approval

The new guidelines require class counsel to disclose "detailed lodestar information" in all fee requests, "even if the requested amount is based on a percentage of the settlement fund." Lodestar billing calculates attorneys' fees by multiplying the reasonable hours worked by lawyers' hourly rates. Judges in the Northern District of California increasingly have been relying on lodestar information as a check on the reasonableness of attorney fees in large class action settlements. The new requirement for detailed lodestar information may signal increased scrutiny and benchmarking of class counsel's fees.

Motions for final approval must also disclose data on submitted claims, undeliverable class notices, opt-outs and objectors. If class counsel seek incentive awards, any such request "must be supported by evidence."

### 3. Post-Distribution Accounting

Parties are now required to file a post-distribution accounting 21 days after settlement funds have been distributed and attorneys' fees paid. The court may choose to hold a hearing after the materials are submitted. The post-distribution accounting must contain, in an "easy-to-read chart," the following information:

- Total settlement fund;
- Number of notices sent to class members out of the total number of class members;
- Claims rate (number and percentage of claim forms submitted);
- Opt-outs and objections;
- Average, median, largest, and smallest recovery per claimant;
- Notice and payment methods;
- Number and value of checks not cashed;
- Amounts distributed to each cy pres recipient;
- Administrative costs; and
- Attorneys' fees and costs, including as a percentage of the settlement fund, and the multiplier.

### What Practitioners Need to Know

The N.D. Cal. Procedural Guidance requires more up-front legwork to obtain preliminary settlement approval, increased scrutiny of attorneys' fees during the final approval phase, and unprecedented transparency of notice efforts and actual claims rates and results via mandatory post-distribution accounting.

The new guidance is in line with, and in some instances considerably more detailed and comprehensive than, the amended Federal Rules of Civil Procedure, which will take effect Dec. 1, 2018. The guidance is consistent with amended Rule 23(c)(2)(B), which will similarly require "the best notice that is practicable under the circumstances."

But the guidance goes well beyond

amended Rule 23(e)(2) governing settlement approval, which will only require courts to determine if a settlement is “fair, reasonable, and adequate” by analyzing, in part, “the costs, risks, and delay of trial and appeal; the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; [and] the terms of any proposed award of attorney’s fees, including timing of payment.” The amended Federal Rules of Civil Procedure do not require a detailed post-distribution accounting, like the N.D. Cal. Guidance.

The N.D. Cal. Procedural Guidance for Class Action Settlements was announced by email to ECF registrants just a few minutes after a recent decision regarding approval of one of the largest recent settlements in the Northern District of California, the \$576 million indirect purchaser class settlement in *In re CRT Antitrust Litig*, currently on appeal in the 9th Circuit. In an order dated November 8, Judge Jon S. Tigar denied the Indirect Purchaser Plaintiffs’ Motion for an Indicative Ruling on their Motion to Amend the IPP Fee Order and Plan of Distribution,

holding that the court previously “erred in approving the parties’ original settlement” and expressing “concerns about the adequacy of the counsel who negotiated that settlement.” *In re Cathode Ray Tube Antitrust Litigation*, Case No. 07-cv-5944-JST (N.D. Cal. Nov. 8, 2018), ECF No. 5362. The court took issue with class counsel releasing indirect purchaser claims for three states (dismissed earlier in the case) without compensation or notice to those class plaintiffs. Although class counsel proposed to add the omitted members back into the class, the court was concerned that the new class members may identify additional problems with the settlement and potentially need separate counsel. The specific guidance requiring class counsel to inform the court of any changes to claims and class composition at the preliminary approval stage should help avert the types of issues now found in the CRT case, and is yet another example of the importance of frontloading the information negotiated and disclosed early in the settlement approval process.

Practitioners should expect to see in-

creased scrutiny of class action settlements in the busy Northern District of California, and for the court’s application of its guidance and the new Federal Rules to set precedent closely watched by federal judges throughout the country.

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