

## PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

Department: \_\_\_\_\_

RE: \_\_\_\_\_

In reviewing your motion for preliminary approval of class action settlement, the Court Orders further briefing on the items checked below. The additional briefing shall be due by \_\_\_\_\_, 20\_\_\_\_. Your hearing date is \_\_\_\_\_, 20\_\_\_\_.

### CLASS CERTIFICATION

- Class definition.
- Numerosity.
- Ascertainability. Sevidal v. Target Corp. (2010) 189 Cal.App.4th 905
- Community of Interest  
The community of interest requirement has three essential elements: “(1) predominant questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class.” Linder v. Thrifty Oil Co. (2000) 23 Cal.4th 429, 435
- Typicality
- Adequacy of class counsel and/or class representative
- Superiority

### CASE SUMMARY

- Summary of the Case, including the legal and factual basis for each claim. Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116, 133; Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles (2010) 186 Cal.App.4th 399, 409.
- Summary of the investigation and discovery conducted by class counsel
- Reasonable estimate of the nature and amount of recovery that each class member could have obtained if Plaintiff prevailed
- Explanation of why the settlement was negotiated at arms-length and is not collusive

### SETTLEMENT TERMS AND EVALUATION – FAIR, ADEQUATE AND REASONABLE

- Proposed terms of the settlement

- Nature of injunctive relief, and valuation of such relief.
- Amount and manner of distribution of the compensation to each class member, including the amount, or an estimate, of what each class member will receive
- 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.
- Whether, and under what circumstances, amounts may revert to Defendant. Cundiff v. Verizon California, Inc. (2008) 167 Cal.App.4th 718, 728-729
- Scope of the release. Israel-Curley v. California Fair Plan (2005) 126 Cal.App.4th 123, 129; Salehi v. Surfside III Condominium Owners' Assn. (2011) 200 Cal.App.4th 1146, 1159-1161.
- The necessity of including a §1542 release as to the putative class members.
- If wages are involved, how is Defendant's share of taxes being paid?
- Explain why the settlement includes terms that are outside the scope of the operative complaint. Trotsky v. Los Angeles Federal Savings and Loan Assn. (1975) 48 Cal.App.3d 134, 148.
- A statement of any affirmative obligations to be undertaken by the class member or class counsel and the reason for any such obligations

#### SUBMISSION OF CLAIMS/EXCLUSIONS/OBJECTIONS

- If class members are required to submit a claim to receive compensation, the motion should indicate why information is required to be furnished and an estimate of the anticipated claims rate
- What actions class counsel will take to encourage submission of claims
- Why the time limit to object or opt-out is reasonable.
- Why the submission of a claim form is necessary

#### CY PRES DISTRIBUTION

- Why does such distribution fills 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. (9<sup>th</sup> Cir. 2011) 663 F.3d 1034, 1038-1041; Dennis v. Kellogg Co. (9<sup>th</sup> 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.

Inadequate discussion of how the parties will handle uncashed checks.

#### NOTICE TO CLASS MEMBERS

Why the content of the notice complies with Ca. Rules of Court, Rule 3.766(d)

Why the manner of giving notice complies with Ca. Rules of Court, Rule 3.766(e)

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)

#### COSTS AND FEES

Proposed fees to the class counsel, the manner of payment and a preliminary justification under existing laws for such fees. Ca. Rules of court, Rule 3.769(b).

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.

#### EXHIBITS TO THE MOTION

Proposed schedule for class notice, objection, opt-out, claim submission, motion for final approval and attorney fees, final accounting and, if applicable, a Final Distribution of Residual Funds

Proposed Judgment should not include a dismissal. Ca. Rules of Court, Rule 3.769(h).

#### OTHER INFORMATION

\_\_\_\_\_

Date: \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
JUDICIAL OFFICER

A complete copy of the Preliminary Class Action Approval Guidelines can be found at the LA Superior Court's website under "Tools for Litigators."