

Preliminary Report on Class-Action Settlement Distributions in the Northern District of California

May 30, 2023



Brandon A. Prince
Vaughn R. Walker
Scott Dodson

In association with the Center for Litigation and Courts
at University of California Law – San Francisco

and

With the assistance of the United States District Court
for the Northern District of California

TABLE OF CONTENTS

INTRODUCTION 3

I. HISTORICAL EFFORTS TO ASSESS THE BENEFITS OF CLASS ACTIONS..... 4

II. STUDY AND METHODOLOGY..... 5

 A. Case Identification 5

 B. Data Collection 6

III. FINDINGS AND RESULTS 6

 A. Guidance Compliance is Infrequent, but Court Encouragement Helps 6

 B. Significant Amounts of the Settlement Funds Appear Unclaimed 8

 C. Claimant Participation is Modest..... 8

 D. Distribution Notice and Methods Have Not Embraced Technology 9

IV. RECOMMENDATIONS 9

 A. The Court Should Study the Feasibility, Costs, and Benefits
 of Real-Time Access to Settlement-Distribution Data 9

 B. The Court Should Clearly Require the Filing of Post-Distribution Reports,
 Remind the Parties and Settlement Administrator of that Requirement,
 and Withhold a Percentage of Attorney Fees until the Court
 Receives and Approves the Final Report..... 10

 C. The Court Should Create a Standardized Input Form—Ideally Electronic—
 For Post-Distribution Accountings 10

 D. The Court Should Encourage Electronic Notice and Payments..... 10

CONCLUSION..... 11

INTRODUCTION

Recognizing that many cases brought as class actions result in settlements, the Civil Rules Advisory Committee amended Rule 23 of the Federal Rules of Civil Procedure in 2018 “to address issues related to settlement.”¹ A “basic focus” of the Advisory Committee was “the extent and types of benefits that settlement will confer on members of the class.”² Because most class-action settlements involve a common-fund resolution, the Advisory Committee observed that “the relief *actually delivered to the class* can be a significant factor in determining the appropriate fee award” to class counsel.”³

What relief is “actually delivered” to class members under a settlement’s terms is often difficult to determine. Accordingly, the United States District Court for the Northern District of California (Northern District) promulgated, on November 1, 2018, *Procedural Guidance for Class Action Settlements* (Guidance).⁴ The Guidance sought systematically to incorporate the 2018 Amendment objectives by requiring a post-distribution accounting to measure the extent and type of benefits that class-action settlements in the Northern District actually confer on class members.⁵

This preliminary report assesses whether and to what extent the Guidance has, in its first three years, achieved its objectives. Part I of the preliminary report provides background on historical efforts to assess the benefits of class actions. Part II describes this study and its methodology. Part III presents the findings and results of the study. Part IV offers recommendations to better achieve the objectives of the Guidance. A brief conclusion follows.

¹ FED. R. CIV. P. 23, Adv. Comm. Note to 2018 Amendment.

² *Id.*

³ *Id.* (emphasis added).

⁴ *Procedural Guidance for Class Action Settlements* (N.D. Cal. Nov. 1, 2018), current version available at <https://www.cand.uscourts.gov/forms/procedural-guidance-for-class-action-settlements/>. The Northern District amended the Procedural Guidance for Class Action settlements on December 5, 2018, and again on August 4, 2022. This preliminary report analyzed settlement reports filed under the December 5, 2018, version of the Procedural Guidance. The full text of the current Guidance is attached to this preliminary report at Appendix A.

⁵ The Guidance requires the parties to file a post-distribution accounting with the following information: total settlement fund, the total number of class members, the total number of class members to whom notice was sent and not returned as undeliverable, the number and percentage of claim forms submitted, the number and percentage of opt-outs, the number and percentage of objections, the average, median, maximum, and minimum recovery per claimant, the methods of notice and the methods of payment to class members, the number and value of checks not cashed, the amounts distributed to each cy pres recipient, the administrative costs, the attorneys’ fees and costs, the attorneys’ fees in terms of percentage of the settlement fund, plaintiffs’ counsel’s updated lodestar total, the lodestar multiplier, the number of class members availing themselves of nonmonetary relief and the aggregate value redeemed.

I. HISTORICAL EFFORTS TO ASSESS THE BENEFITS OF CLASS ACTIONS

Efforts to assess the benefits of class actions have been sporadic and infrequent.⁶ The first known effort is a 1986 article by Fred Gramlich, an economist at the United States Department of Justice, who studied twenty antitrust settlements in which claimants were paid in coupons. Gramlich found an average redemption rate of 26.3% for all cases and a 13.1% rate in consumer cases.⁷ In 1999, Deborah Hensler and coauthors studied ten class-action settlements for a RAND Institute report, finding “enormous variety in the amounts of money that class members received.”⁸ In 2007, Nicholas Pace surveyed insurance companies about their involvement in class actions on behalf of RAND and reported distributions in twenty-nine cases.⁹ He found that, in ten cases, 100% of class members received some compensation, but that the average for all cases was 45% and the median was 15%.¹⁰ In 2008, Pace and William Rubenstein sought to determine how well class actions provided compensation for class members.¹¹ The study focused on 31 class-action settlements but found data in only six.¹² In 2010, Brian Fitzpatrick published a study of *all* class-action settlements (and fee awards) from 2006 to 2007.¹³ Finally, in 2019, a Federal Trade Commission Staff Report reviewed 149 consumer class-action cases and analyzed the settlement characteristics of these cases, focusing on whether the settlements “adequately compensate injured customers” because of “inadequate redress” in the settlement terms or because the settlement-distribution process “create[s] substantial barriers to consumer participation.”¹⁴

These efforts to study the benefits that class-action settlements provide to class members (and their lawyers) reveal the paucity of knowledge about actual settlement *distribution*. Recognizing this deficiency in the existing empirical literature on class-action distributions, scholars have called for reforms to centralize settlement administration and to collect data for more robust analysis.¹⁵

In 2018, the Northern District of California promulgated *Procedural Guidance for Class Action Settlements*. The Guidance required a post-distribution accounting to

⁶ Linda Mullinix, *Ending Class Actions as We Know Them*, 64 EMORY L.J. 399, 419 (2014) (“There are no empirical studies that have drilled down to ascertain what class claimants actually are paid individually for their claims as a result of the class litigation.”).

⁷ Fred Gramlich, *Scrap Damages in Antitrust Cases*, 31 ANTITRUST BULL. 261 (1986).

⁸ DEBORAH R. HENSLER ET AL., CLASS ACTION DILEMMAS: PURSUING PUBLIC GOALS FOR PRIVATE GAIN 18 (RAND 2000).

⁹ NICOLAS M. PACE, INSURANCE CLASS ACTIONS IN THE UNITED STATES (RAND 2007).

¹⁰ *Id.*

¹¹ NICOLAS M. PACE & WILLIAM RUBENSTEIN, HOW TRANSPARENT ARE CLASS ACTION OUTCOMES? (RAND 2008).

¹² *Id.*

¹³ Brian T. Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Awards*, 7 J. EMPIRICAL LEGAL STUD. 811 (2010).

¹⁴ CONSUMERS AND CLASS ACTIONS: A RETROSPECTIVE AND ANALYSIS OF SETTLEMENT CAMPAIGNS 1 (FTC 2019).

¹⁵ Amanda M. Rose, *Classaction.gov*, 88 U. CHI. L. REV. 487 (2021).

measure the extent and type of benefits that class-action settlements in the Northern District actually confer on class members. Until this preliminary report, no empirical study of the post-distribution reports filed in response to the Guidance has been conducted.

II. STUDY AND METHODOLOGY

This part sets out the methodology used to collect and analyze post-distribution reports filed under the Northern District's Guidance.

A. Case Identification

Under the supervision of Vaughn Walker, a former chief judge of the Northern District and Affiliated Scholar at the Center for Litigation and Courts, students enrolled in a seminar at UC Law – SF researched the docket sheets of certain cases that included a post-distribution report under the Guidance and began developing an analysis of those reports to the Northern District. After the seminar concluded, one student, Brandon Prince, continued the research under Judge Walker's supervision.

Data collection initially encountered numerous obstacles. The lack of post-distribution accountings for many settlements necessitated a laborious search through orders and motions related to preliminary and final settlement approvals. Some data only existed in attached exhibits or declarations for a given filing. The use of different docket filings in each respective case also meant there was a risk of pulling settlement figures from different points in the litigation, undermining the accuracy and comparability of each case's "final" settlement distribution. Additionally, post-distribution reports did not follow a uniform template and did not have standard methods for calculating each required statistic. As a result, first collection effort yielded a set of data with potential omissions, inaccuracies, and incomparability.

A UC Law researcher contacted the Northern District to try and fill these gaps with more comprehensive data. Coincidentally, Judges Jacqueline Scott Corley, Donna Ryu, and Thomas Hixson were also planning a joint project to review and analyze post-distribution accounting data. The judges agreed to collaborate with the UC Law researchers by assembling from the Northern District a list of 234 class actions that ended in a final settlement between November 5, 2018 (the original publication date of the guidance) and January 31, 2022. This list, which includes 95 wage-and-hour cases, 77 consumer cases, 23 securities cases, and 39 other cases, serves as the basis for this preliminary report.¹⁶

¹⁶ The Federal Judicial Center's Integrated Database suggests that more than 300 class actions were settled within the time period covered by this preliminary report.

B. Data Collection

For each case supplied by the Northern District, researchers obtained available settlement data for the categories listed in Appendix B. 92 of the 234 cases included a post-distribution report; for those 92 cases, researchers collected data from the report. One major limitation of the study was the lack of a uniform post-distribution accounting template. As a result, the 92 post-distribution accountings varied in their level of detail and lacked comparability with other post-distribution reports. Some accountings omitted certain statistics entirely. Other cases did not file a chart of any kind, but instead filed one or more “status updates” with the Court regarding the settlement-distribution statistics. Often, these status updates only concerned the actual distribution process (e.g., uncashed checks and distribution attempts) and did not report the other required post-distribution accounting information.

For the other 142 cases, researchers collected data from the Order Approving Final Settlement, Order Approving Preliminary Settlement, and exhibits and declarations related to those orders. In cases without a post-distribution accounting, the required settlement figures existed across multiple filings, in different formats, and calculated metrics at different points of time in the litigation. For example, the lodestar figures in these cases often came from motions for final approval of attorneys’ fees, which typically do not include counsel’s time resolving the final settlement. In addition, some cases reported attorneys’ fees and costs as a combined dollar amount, while others reported totals for administrative costs and attorneys’ fees while filings and distribution continued, meaning the reported figure did not reflect the final amount spent.

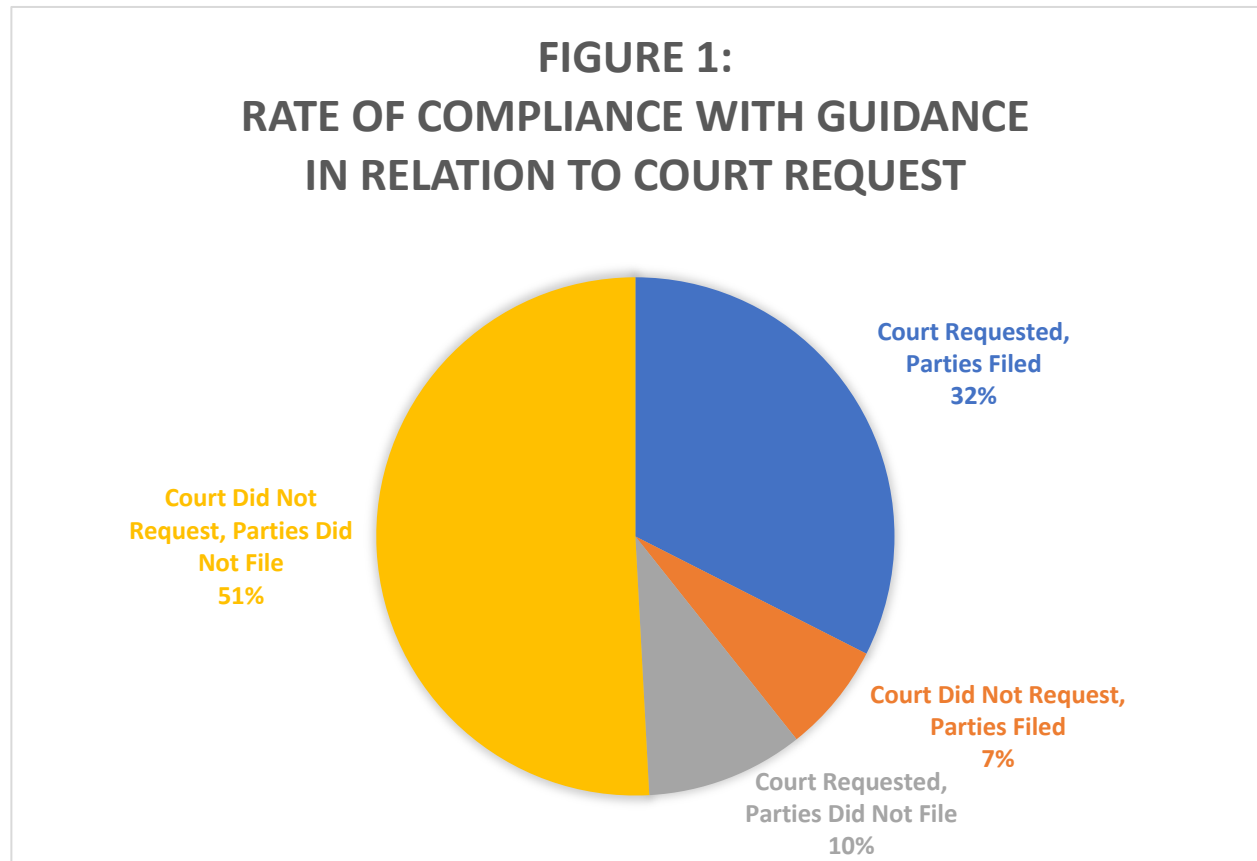
III. FINDINGS AND RESULTS

This Part sets out the key findings and results of this preliminary report. Gross data are reported in tables presented in Appendix C.

A. Guidance Compliance is Infrequent, but Court Encouragement Helps.

The data on rates of compliance are reported in Table 1 of Appendix C. Figure 1 below depicts the relationship between the filing of a report and the court’s request:

**FIGURE 1:
RATE OF COMPLIANCE WITH GUIDANCE
IN RELATION TO COURT REQUEST**



Only 92 (39%) of the 234 settlements studied (the blue and orange slices of the pie chart in Figure 1) included a post-distribution accounting in compliance with the Guidance.

Court requests for reports do seem to prod the parties into filing one. When the court asked for a report, the parties complied 76% of the time. Shockingly, however, the parties failed to file a post-distribution accounting in 23 cases in which the court *did* request one.

In only 7% of cases did the parties file a post-distribution accounting without any prompting by the court. In some cases without a court request, the presiding judge may have concluded that a post-distribution accounting was unnecessary because of small class size, small gross-settlement total, or complete and rapid distribution of the available funds. Because the Guidance stresses that, “[e]ven though the guidance is highly recommended, the parties must comply in the first instance with the specific orders of the presiding judge” parties may have believed that the lack of a court order absolved them of the requirement to file a report.

B. Significant Amounts of the Settlement Funds Appear Unclaimed.

Table 8 in Appendix C sets out the net settlement funds unclaimed: the residual amount of the gross settlement funds left after all payments through distributions (including cy pres), costs, fees, and plaintiff service awards. Although the percentages of funds unclaimed are small (2% of settlements with distribution reports and 7% of all settlements), the dollar amounts are high. For the 85 settlements with distribution reports, nearly \$36 million went unclaimed. For all 167 settlements with data on this metric, nearly \$203 million went unclaimed. (The large difference between settlements with reports and settlements without reports suggests that the reporting requirement may incentivize more complete distribution, though more analysis is needed before settling on that conclusion.)

It is possible that the lack of reporting on cy pres distributions and the short length of time between the initial distribution and the filing of the post-distribution accounting help explain the large amounts of unclaimed funds. Before the August 2022 amendments to the Guidance, reports were filed within 21 days of the distribution of attorney fees and sending out the first settlement distribution. (The amendments now require the report to be filed within 21 days of the settlement checks becoming stale—or, if checks are not used, once all funds have been distributed to the class and cy pres beneficiaries.) It is likely that administrators tracked down and paid class members in additional rounds of distribution when the initial payments went unclaimed or undeliverable, even after post-distribution reports had already been filed under the unamended Guidance. Such activities may also have caused an increase in administration costs not reflected in the collected data. Further, tax payments on the settlement, as well as payments required under statutes like the California Private Attorney General Act (PAGA), may also represent a portion of these unclaimed totals. In other words, the net unclaimed amounts reported in Table 8 may overstate the amounts ultimately left unclaimed. Successive studies of reports filed after the August 2022 amendment may reveal a more accurate picture of unclaimed funds.

C. Claimant Participation is Modest.

Table 3 of Appendix C sets out data on claimant participation by reporting the numbers and percentages of valid claim forms and the percentages of checks not cashed.

The data suggest that class-member participation in settlement distribution is modest, with an average participation rate of 31% to 33% and a median participation rate of 12% among class members. Given the size of the classes, these low percentages reveal that substantially large numbers of claimants never file a valid claim form. Even for those class members who do receive payments by check, significant percentages of them (21% to 25% on average, 12% to 15% by median) never cash those checks. These figures suggest that as much as 80% of class members never obtain any recovery.

D. Distribution Notice and Methods Have Not Embraced Technology.

Table 5 of Appendix C sets out data on the methods of notice and methods of payment.

Despite the wide availability and use of digital communication and payment, the settlements skewed heavily toward physical notice by mail and payment by check. 37% of settlements with distribution reports and 40% of all settlements provided notice *only* by mail. Given the numbers of class members, notice by mail likely is also the most expensive form of notice. Notice by mail also lacks platform integration between notice and claim form.

As for payment, 76% of settlements with distribution reports and 64% of all settlements used paper checks as the *sole* form of payment distribution. The predominance of paper checks to pay the settlement class may help explain why the distribution process is often cumbersome and requires repeated distributions. The use of paper checks requires administrators to perform multiple rounds of check distribution. After each distribution, the court, parties, and other class members must wait for the checks to expire or come back as undeliverable in the mail to see whether the amount of money that remains in the fund justifies another attempted round of distribution. If an additional round is justified, the administrator must then expend additional funds finding the remaining settlement members through processes like address tracing. This, in turn, creates a further burden on the settlement payout to the class. The process of distributing checks over multiple rounds means more administrative costs. It also means that plaintiffs' counsel must file additional paperwork with the Court to provide interim updates on the status of distribution. In short, the issuance and delivery of paper checks is likely both the most expensive form of payment and the least deposited form of payment, though more analysis is needed to confirm these suppositions.

IV. RECOMMENDATIONS

This deep dive into the class-action settlement-distribution process highlights areas for improvement and reform.

A. The Court Should Study the Feasibility, Costs, and Benefits of Real-Time Access to Settlement-Distribution Data.

The most effective method to ensure proper court oversight of the settlement-distribution process is to require the settlement administrator provide real-time access to distribution data. As it stands, the ability to monitor the distribution only comes from frozen-in-time declarations and exhibits provided by the settlement administrator. The lack of real-time data also prohibits the court from capturing this comprehensive information and later utilizing it to inform itself of larger problems in the class action settlement process. Allowing the court to access to real-time settlement data would

improve the efficacy of the court's oversight and monitoring functions. Further, it would improve judicial efficiency by eliminating the need to file additional orders in the event of insufficient post-distribution accounting.

It is unclear, however, whether real-time access is feasible and cost-effective. Some settlement administration may be too administratively complex to offer real-time access. Other administrations may be so easy as to not need such real-time monitoring. In the end, the costs may outweigh the benefits in at least some settlement administrations. Accordingly, the court should study the feasibility and cost-effectiveness of requiring real-time access to distribution data. The court could do so in a pilot study of select settlement administrations.

B. The Court Should Clearly Require the Filing of Post-Distribution Reports, Remind the Parties and Settlement Administrator of that Requirement, and Withhold a Percentage of Attorney Fees until the Court Receives and Approves the Final Report.

Compliance with the Guidance is marginal, especially without court involvement. The norm of filing a post-distribution report may not yet be ingrained. To inculcate and deepen this norm, the court should clearly state in the Guidance that a report is required unless suspended by court order. Further, the court should remind the parties and settlement administrator of the requirement as part of its monitoring functions. Finally, to help ensure compliance, the court should require a mandatory withholding of 10% of the attorney fees until the filing and subsequent approval of the final post-distribution accounting.

C. The Court Should Create a Standardized Input Form—Ideally Electronic—For Post-Distribution Accountings.

One of the difficulties encountered in this study was the variability of post-distribution reports. To simplify reporting, ensure consistency, and guard against incompleteness, the court should create a standardized, electronic input form for filing the post-distribution accounting. This form would allow for easy comparison and ensure that electronic data for each category is placed in the correct "bin" for collection and analysis. Further, this form could fashion the inputs to ensure that all cases use the same formula to calculate a given statistic in the post-distribution accounting.

D. The Court Should Encourage Electronic Notice and Payments.

The low claim rate in cases requiring a claim form indicates that any affirmative step on the settlement members' part will greatly reduce participation. The generation of multiple paper check distributions alone will not solve this problem because many individuals still fail to take the step of cashing the check and collecting their funds.

The increasing ubiquity of digital payments and online banking creates an opportunity to improve class benefits by using electronic notices and automatic payments. For example, a consumer class action involving a product could use data on the payment methods used by the class to purchase the product and distribute the eventual settlement back to these accounts. However, this subject requires further research and analysis, including the privacy implications that may arise in the access of consumers' purchasing and financial information to facilitate automatic payments.

In general, the compensatory success of a class action depends upon the amounts ultimately received by class members and the percentages of class members receiving amounts. It may well be that, in some types of classes, a claims rate of 2% is currently normal,¹⁷ but that does not mean that that kind of figure is acceptable when compensation is a significant goal of the action. Low claims rates and low per-claimant amounts creates stark contrasts between class benefits and class-counsel fees,¹⁸ which feed the narrative that class actions enrich lawyers at the expense of clients. The goal of effective reform of class-settlement administration should be to maximize class participation and recovery whenever compensation is a significant aim of the action. The use of technology to encourage participation and to minimize costs will be a key mechanism for achieving that goal.

CONCLUSION

Nationally, settlement distributions lack transparency. This lack of transparency means that court oversight is less effective, academic study is impossible, and, ultimately, class benefits suffer.

The Northern District's decision to require post-distribution accounting is a significant first step in the process of improving the efficacy of large-scale class-action settlement distribution. By creating a district-wide requirement, the Northern District is improving court monitoring and enabling study of settlement-distribution trends.

This preliminary report highlights findings using the available data thus far, discusses obstacles that arise in imposing such a detailed requirement on complex class-action cases, and proposes some solutions for further evolution of post-distribution reporting. Future studies should focus on more comprehensive and detailed analysis of post-distribution figures in light of the August 2022 amendments to the Guidance and any other reforms adopted in light of the recommendations made here.

¹⁷ See *Norcia v. Samsung Telecomm. Am.*, 3:14-cv-00582-JD, Dkt. 199, at 6 (N.D. Cal. July 20, 2021) (asserting that a claims rate of just over 2% "is on par with similar cases" in the consumer-class context).

¹⁸ *Id.*

APPENDIX A: *Procedural Guidance for Class Action Settlements*

Procedural Guidance for Class Action Settlements

Published November 1, 2018; modified December 5, 2018 and August 4, 2022

NOTE: Even though the guidance is highly recommended, the parties must comply in the first instance with the specific orders of the presiding judge.

Parties submitting class action settlements for preliminary and final approval in the Northern District of California should review and follow these guidelines to the extent they do not conflict with a specific judicial order in an individual case. Failure to address the issues discussed below may result in unnecessary delay or denial of approval. Parties and mediators should consider this guidance during settlement negotiations and when drafting settlement agreements and exhibits, including class notices. In cases litigated under the Private Securities Litigation Reform Act of 1995 and the Fair Labor Standards Act, follow the statute and case law requirements that apply to such cases, such as regarding reasonable costs and expenses awards to representative plaintiffs, and this procedural guidance to the extent applicable.

Preliminary Approval

1) INFORMATION ABOUT THE SETTLEMENT—The motion for preliminary approval should state, where applicable:

- a. Any differences between the settlement class and the class proposed in the operative complaint (or, if a class has been certified, the certified class) and an explanation as to why the differences are appropriate.
- b. Any differences between the claims to be released and the claims in the operative complaint (or, if a class has been certified, the claims certified for class treatment) and an explanation as to why the differences are appropriate.
- c. The class recovery under the settlement (including details about and the value of injunctive relief), the potential class recovery if plaintiffs had fully prevailed on each of their claims, claim by claim, and a justification of the discount applied to the claims.
- d. Any other cases that will be affected by the settlement, an explanation of what claims will be released in those cases if the settlement is approved, the class definitions in those cases, their procedural posture, whether plaintiffs' counsel in those cases participated in the settlement negotiations, a brief history of plaintiffs' counsel's discussions with counsel for plaintiffs in those other cases before and during the settlement negotiations, an explanation of the level of coordination between the two groups of plaintiffs' counsel, and an explanation of the significance of those factors on settlement approval. If there are no such cases, counsel should so state.
- e. The proposed allocation plan for the settlement fund.
- f. If there is a claim form, an estimate of the expected claim rate in light of the experience of the selected claims administrator and/or counsel based on comparable settlements,

the identity of the examples used for the estimate, and the reason for the selection of those examples.

- g. In light of Ninth Circuit case law disfavoring reversions, whether and under what circumstances money originally designated for class recovery will revert to any defendant, the expected and potential amount of any such reversion, and an explanation as to why a reversion is appropriate.

2) SETTLEMENT ADMINISTRATION—The parties are expected to get multiple competing bids from potential settlement administrators. In the motion for preliminary approval, the parties should:

- a. Identify the proposed settlement administrator, the settlement administrator selection process, how many settlement administrators submitted proposals, what methods of notice and claims payment were proposed, and the lead class counsel's firms' history of engagements with the settlement administrator over the last two years.
- b. Address the settlement administrator's procedures for securely handling class member data (including technical, administrative, and physical controls; retention; destruction; audits; crisis response; etc.), the settlement administrator's acceptance of responsibility and maintenance of insurance in case of errors, the anticipated administrative costs, the reasonableness of those costs in relation to the value of the settlement, and who will pay the costs.

The court may not approve the amount of the cost award to the settlement administrator until the final approval hearing. The Court encourages the parties to address the items listed in the checklist linked here in formulating their response.

3) NOTICE—The parties should ensure that the class notice is easily understandable, in light of the class members' communication patterns, education levels, and language needs. The notice should include the following information:

- a. Contact information for class counsel to answer questions.
- b. The address for a website, maintained by the claims administrator or class counsel, that lists key deadlines and has links to the notice, claim form (if any), preliminary approval order, motions for preliminary and final approval and for attorneys' fees, and any other important documents in the case.
- c. Instructions on how to access the case docket via PACER or in person at any of the court's locations.
- d. The date and time of the final approval hearing, clearly stating that the date may change without further notice to the class.
- e. A note to advise class members to check the settlement website or the Court's PACER site to confirm that the date has not been changed.

The parties should explain how the notice distribution plan is effective. Class counsel should consider the following ways to increase notice to class members: identification of potential class members through third-party data sources; use of text messages and social media to provide notice to class members; hiring a marketing specialist; providing a settlement website that estimates claim

amounts for each specific class member and updating the website periodically to provide accurate claim amounts based on the number of participating class members; and distributions to class members via direct deposit.

The notice distribution plan should rely on U.S. mail, email, and/or social media as appropriate to achieve the best notice that is practicable under the circumstances, consistent with Federal Rule of Civil Procedure 23(c)(2). If U.S. mail is part of the notice distribution plan, the notice envelope should be designed to enhance the chance that it will be opened.

Below is suggested language for inclusion in class notices:

This notice summarizes the proposed settlement. For the precise terms of the settlement, please see the settlement agreement available at www._____.com, by contacting class counsel at _____, by accessing the Court docket in this case, for a fee, through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>, or by visiting the office of the Clerk of the Court for the United States District Court for the Northern District of California, [insert appropriate Court location here], between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.

4) **OPT-OUTS**—The notice should instruct class members who wish to opt out of the settlement to send a letter, setting forth their name and information needed to be properly identified and to opt out of the settlement, to the settlement administrator and/or the person or entity designated to receive opt outs. It should require only the information needed to opt out of the settlement and no extraneous information or hurdles. The notice should clearly advise class members of the deadline, methods to opt out, and the consequences of opting out.

5) **OBJECTIONS**—Objections must comply with Federal Rule of Civil Procedure 23(e)(5). The notice should instruct class members who wish to object to the settlement to send their written objections only to the court. All objections will be scanned into the electronic case docket, and the parties will receive electronic notices of filings. The notice should make clear that the court can only approve or deny the settlement and cannot change the terms of the settlement. The notice should clearly advise class members of the deadline for submission of any objections.

Below is suggested language for inclusion in class notices:

“You can ask the Court to deny approval by filing an objection. You can't ask the Court to order a different settlement; the Court can only approve or reject the settlement. If the Court denies approval, no settlement payments will be sent out, and the lawsuit will continue. If that is what you want to happen, you should object.

Any objection to the proposed settlement must be in writing. If you file a timely written objection, you may, but are not required to, appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for hiring and

paying that attorney. All written objections and supporting papers must (a) clearly identify the case name and number (_____ v. _____, Case No. _____), (b) be submitted to the Court either by filing them electronically or in person at any location of the United States District Court for the Northern District of California or by mailing them to the Class Action Clerk, United States District Court for the Northern District of California, [insert appropriate Court location here], and (c) be filed or postmarked on or before _____.”

6) **ATTORNEYS’ FEES AND COSTS**—Although attorneys’ fee requests will not be approved until the final approval hearing, class counsel should include information about the fees and costs (including expert fees) they intend to request, their lodestar calculation (including total hours), and resulting multiplier in the motion for preliminary approval. In a common fund case, the parties should include information about the relationship between the amount of the common fund, the requested fee, and the lodestar. To the extent counsel base their fee request on having obtained injunctive relief and/or other non-monetary relief for the class, counsel should discuss the benefit conferred on the class.

7) **SERVICE AWARDS**—Judges in this district have different perspectives on extra payments to named plaintiffs or class representatives that are not made available to other class members. Counsel seeking approval of service awards should consult relevant prior orders by the judge reviewing the request. Although service award requests will not be approved until the final approval hearing, the parties should include information about the service awards they intend to request as well as a summary of the evidence supporting the awards in the motion for preliminary approval. The parties should ensure that neither the size nor any conditions placed on the incentive awards undermine the adequacy of the named plaintiffs or class representatives. In general, unused funds allocated to incentive awards should be distributed to the class pro rata or awarded to cy pres recipients.

8) **CY PRES AWARDEES**—If the settlement contemplates a cy pres award, the parties should identify their chosen cy pres recipients, if any, and how those recipients are related to the subject matter of the lawsuit and the class members’ claims. The parties should also identify any relationship they or their counsel have with the proposed cy pres recipients. In general, unused funds allocated to attorneys’ fees, service awards, settlement administration costs, and class member payments should be distributed to the class pro rata if feasible, or else awarded to cy pres recipients or to the relevant government authorities.

9) **TIMELINE**—The parties should ensure that class members have at least thirty-five days to opt out or object to the settlement and the motion for attorney’s fees and costs.

10) **CLASS ACTION FAIRNESS ACT (CAFA) AND SIMILAR REQUIREMENTS**—The parties should address whether CAFA notice is required and, if so, when it will be given. In addition, the parties should address substantive compliance with CAFA. For example, if the settlement includes coupons, the parties should explain how the settlement complies with 28 U.S.C. § 1712. In addition, the parties should address whether any other required notices to government entities or others have been provided, such as notice to the Labor & Workforce Development Agency (LWDA) pursuant to the Private Attorneys General Act (PAGA).

11) **COMPARABLE OUTCOMES**—Lead class counsel should provide information about comparable cases, including settlements and litigation outcomes. Lead class counsel should provide the following information for as many as feasible (and at least one) comparable class settlements (i.e., settlements involving the same or similar claims, parties, issues):

- a. The claims being released, the total settlement fund, the total number of class members, the total number of class members to whom notice was sent, the method(s) of notice, the number and percentage of claim forms submitted, the average recovery per class member or claimant, the amounts distributed to cy pres recipients, the administrative costs, the attorneys' fees and costs, the total exposure if the plaintiffs had prevailed on every claim.
- b. Where class members are entitled to non-monetary relief, such as discount coupons or debit cards or similar instruments, the number of class members availing themselves of such relief and the aggregate value redeemed by the class members and/or by any assignees or transferees of the class members' interests.
- c. Where injunctive and/or other non-monetary relief has been obtained, discuss the benefit conferred on the class.

Counsel should summarize this information in easy-to-read charts that allow for quick comparisons with other cases, supported by analysis in the text of the motion.

12) **ELECTRONIC VERSIONS**—Electronic versions (Microsoft Word or WordPerfect) of all proposed orders and notices should be submitted to the presiding judge's Proposed Order (PO) email address when filed. Most judges in this district use Microsoft Word, but counsel should check with the individual judge's Courtroom Deputy.

13) **OVERLAPPING CASES**—Within one day of filing of the preliminary approval motion, the defendants should serve a copy on counsel for any plaintiffs with pending litigation, whether at the trial court or appellate court level, whether active or stayed, asserting claims on a representative (e.g., class, collective, PAGA, etc.) basis that defendants believe may be released by virtue of the settlement.

Final Approval

1) **CLASS MEMBERS' RESPONSE**—The motion for final approval briefing should include information about the number of undeliverable class notices and claim packets, the number of class members who submitted valid claims, the number of class members who opted out, and the number of class members who objected to or commented on the settlement. In addition, the motion for final approval should respond to any objections.

2) **ATTORNEYS' FEES**—All requests for approval of attorneys' fees must include detailed lodestar information, even if the requested amount is based on a percentage of the settlement fund. Declarations of class counsel as to the number of hours spent on various categories of activities related to the action by each biller, together with hourly billing rate information may be sufficient, provided that the declarations are adequately detailed. Counsel should be prepared to submit copies of detailed billing records if the court orders.

Regardless of when they are filed, requests for attorneys' fees must be noticed for the same date as the final approval hearing. If the plaintiffs choose to file two separate motions, they should not repeat the case history and background facts in both motions. The motion for attorneys' fees should refer to the history and facts set out in the motion for final approval.

3) SERVICE AWARDS—All requests for service awards must be supported by evidence of the value provided by the proposed awardees, the risks they undertook in participating, the time they spent on the litigation, and any other justifications for the awards.

4) ELECTRONIC VERSIONS—Electronic versions (Microsoft Word or Word Perfect) of all proposed orders and judgments should be submitted to the presiding judge's Proposed Order (PO) email address at the time they are filed.

Post-Distribution Accounting

1) Within 21 days after the settlement checks become stale (or, if no checks are issued, all funds have been paid to class members, cy pres beneficiaries, and others pursuant to the settlement agreement), the parties should file a Post-Distribution Accounting (and post it on the settlement website), which provides the following information:

- a. The total settlement fund, the total number of class members, the total number of class members to whom notice was sent and not returned as undeliverable, the number and percentage of claim forms submitted, the number and percentage of opt-outs, the number and percentage of objections, the average, median, maximum, and minimum recovery per claimant, the method(s) of notice and the method(s) of payment to class members, the number and value of checks not cashed, the amounts distributed to each cy pres recipient, the administrative costs, the attorneys' fees and costs, the attorneys' fees in terms of percentage of the settlement fund, plaintiffs' counsel's updated lodestar total, and the lodestar multiplier.
- b. Where class members are entitled to non-monetary relief, such as discount coupons, debit cards, or similar instruments, the number of class members availing themselves of such relief and the aggregate value redeemed by the class members and/or by any assignees or transferees of the class members' interests.
- c. Where injunctive and/or other non-monetary relief has been obtained, discuss the benefit conferred on the class.

Counsel should summarize this information in an easy-to-read chart that allows for quick comparisons with other cases.

3) The Court may hold a hearing following submission of the parties' Post-Distribution Accounting.

APPENDIX B:
Categories of Data Collected on 234 Class-Action Settlements

General Case Information

Case Name
Case Number
Subject Matter
Date of Final Approval
Docket Number of Final Approval
Requires Post Distribution post-distribution accounting (in Final Approval)? (Yes/No)
Docket Number of Post-Distribution accounting
NOS
Cause/Jurisdiction
Type of Class Action ((b)(3), (b)(2), or (b)(2)/(b)(3))
Date of Complaint

Settlement Class Information

Number of Class Members
Notice Method
Settlement Website?
Number of Valid Claim Forms Submitted
Percent of Claim Forms Submitted (Valid Claim Forms/Total Class Members)

Settlement Distribution Breakdown

Total Settlement Amount (Gross) (\$)
Best estimate about actual settlement amount distributed to the class (\$)
Mean Recovery (\$)
Median Recovery (\$)
Maximum Recovery (\$)
Minimum Recovery (\$)
Payment Method(s)
Checks Distributed
Uncashed Checks
% Uncashed Checks
Cy Pres Amount (\$)
Cy Pres Recipient(s)
Administrative Costs (\$)
Attorney Fees (\$)
Attorney Costs (\$)
Attorney Fee Percentage of Gross Settlement Fund
Attorney Fee Percentage of Net Settlement Fund (actual distribution estimate)
Lodestar Amount (\$)
Lodestar Multiplier (using fees only)
Number of Named Plaintiff Service/Incentive Awards

Total Amount Paid in Service/Incentive Awards

Because the primary focus of this preliminary report is on the actual distribution of settlement funds and not the notice process, data in the following categories were not collected:

Date of Preliminary Approval

Date of Distribution

Number of Notices Sent

Number of Notices not returned as undeliverable

Number of Opt-Outs

Number of Objections

Number of Checks Distributed

APPENDIX C:
Data Tables

Table 1: Rate of Compliance with Guidance

	Report Filed	Report Not Filed	Total
Court Requested	76 (32%)	23 (10%)	99 (42%)
Court Did Not Request	16 (7%)	119 (51%)	135 (58%)
Totals	92 (39%)	142 (61%)	234 (100%)

Table 2: Gross Settlement Fund and Amounts Actually Distributed

	Distribution Reports	All Settlements
Gross Settlement Fund		
Number of Settlements with Data	87	204
Maximum Settlement Amount	\$492,808,756	\$650,000,000
Average Settlement Amount	\$18,879,398	\$16,534,192
Median Settlement Amount	\$2,750,000	\$2,250,000
Minimum Settlement Amount	\$100,000	\$52,841
Actual Amount Distributed to Class		
Number of Settlements with Data	87	175
Maximum Amount Distributed	\$350,096,547	\$350,096,547
Average Amount Distributed	\$12,905,454	\$10,517,156
Median Amount Distributed	\$1,464,695	\$1,329,468
Minimum Amount Distributed	\$2,450	\$2,450

Table 3: Number of Class Members, Percentage of Valid Claim Forms, and Percentage of Checks Not Cashed

	Distribution Reports	All Settlements
Number of Class Members		
Number of Settlements with Data	86	199
Maximum Number	12,800,000	180,000,000
Average Number	469,733	2,199,594
Median Number	18,173	4,939
Minimum Number	25	25
Percentage of Valid Claim Forms		
Number of Settlements with Data	53	77
Maximum Percentage	100%	100%
Average Percentage	31%	33%

Preliminary Report on Class-Action Settlement Distributions in the Northern District of California

Median Percentage	12%	12%
Minimum Percentage	0.01%	0.01%
Percentage of Checks Not Cashed		
Number of Settlements with Data	38	59
Average Percentage	24%	21%
Median Percentage	15%	12%

Table 4: Recovery Per Claimant

	Distribution Reports	All Settlements
Maximum Recovery Per Claimant		
Number of Settlements with Data	76	113
Maximum Maximum	\$40,026,648	\$40,026,648
Average Maximum	\$1,062,284	\$719,879
Median Maximum	\$2,597	\$3,325
Minimum Maximum	\$10	\$10
Average Recovery Per Claimant		
Number of Settlements with Data	79	135
Maximum Average	\$12,427	\$46,929
Average Average	\$1,390	\$2,249
Median Average	\$409	\$675
Minimum Average	\$3	\$1
Median Recovery Per Claimant		
Number of Settlements with Data	61	65
Maximum Median	\$8,517	\$8,517
Average Median	\$487	\$517
Median Median	\$131	\$135
Minimum Median	\$0.21	\$0.21
Minimum Recovery Per Claimant		
Number of Settlements with Data	69	94
Maximum Minimum	\$4,000	\$4,000
Average Minimum	\$190	\$185
Median Minimum	\$10	\$23
Minimum Minimum	\$0.01	\$0.01

Table 5: Methods of Notice and Methods of Payment

	Distribution Reports	All Settlements
Methods of Notice		
Number of Settlements with Data	92	234
Mail Only	37%	40%
Mail and Email	25%	20%
Mail, Email, and Media	21%	19%
Mail and Media	9%	6%
Email Only	2%	3%
Email and Media	2%	2%
Media Only	2%	3%
Other or NA	2%	9%
Methods of Payment		
Number of Settlements with Data	92	234
Check Only	76%	64%
Check or Voucher, Account Credit, Direct Deposit, PayPal, Zelle, eCheck, Debit Card	16%	16%
Check or Wire Transfer	5%	3%
Unavailable or Injunctive Relief	2%	16%

Table 6: Cy Pres Awards

	Distribution Reports	All Settlements
Cy Pres Amounts Distributed		
Number of Settlements with Data	30	33
Maximum	\$20,172,945	\$20,172,945
Average	\$825,705	\$1,021,084
Median	\$46,642	\$44,056
Minimum	\$0	\$0

Table 7: Costs and Attorney Fees

	Distribution Reports	All Settlements
Administrative Costs		
Number of Settlements with Data	86	185
Average	\$366,795	\$249,022
Median	\$83,747	\$53,610
Attorney Costs		
Number of Settlements with Data	92	208
Average	\$308,420	\$203,643

Preliminary Report on Class-Action Settlement Distributions in the Northern District of California

Median	\$27,753	\$22,315
Attorney Fees (dollars)		
Number of Settlements with Data	92	229
Average	\$4,096,320	\$3,427,157
Median	\$754,825	\$637,500
Attorney Fees (percent of gross fund)		
Number of Settlements with Data	85	196
Average	30%	32%
Median	25%	25%
Class Counsel Lodestar Total		
Number of Settlements with Data	83	197
Average	\$4,046,052	\$2,961,378
Median	\$730,015	\$700,114
Class Counsel Lodestar Multiplier		
Number of Settlements with Data	83	197
Average	1.60	1.17
Median	0.89	0.90

Table 8: Net Funds Unclaimed

	Distribution Reports	All Settlements
Combined Amounts		
Number of Settlements with Data	85	167
Combined Gross Settlement Totals	\$1,776,615,658	\$2,734,236,918
Combined Total Payments	\$1,740,793,908	\$2,531,430,616
Total Net Funds Unclaimed	\$35,821,749	\$202,806,302
Percentage of Funds Unclaimed	2%	7%