

Expanding
Access to Justice
through
Class Action Residuals
and Other Court Awards



A TOOLKIT

**THE
CAMPAIGN
FOR JUSTICE**

**CHOOSE JUSTICE. INCREASING
ACCESS FOR THOSE WITHOUT.**

Cy pres Awards create an opportunity for attorneys and judges to support funding for legal aid and expand access to justice for all.

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As President of the Board of the State Bar of California, I am committed to identifying ways to expand legal services to protect those most in need. Growing up the son of immigrant parents, I saw firsthand the importance of the law as a tool for fighting for the underdog and protecting people from injustice. All people, regardless of their ability to pay for it, should have access to justice. Funding for legal aid *must* enable California's neediest to fairly rely on their justice system.

As stakeholders in the justice system, the Access to Justice Commission and the Legal Services Trust Fund Commission have responded to the need for legal aid funding by forming a *cy pres* Committee to examine ways that court awards can generate additional resources for indigent Californians. The Committee studied models in other states, examined legal precedents, and then produced this Toolkit to educate members of the Bench and Bar.

Legal professionals can use *cy pres* to promote access to justice for those who need it. While every case is different, it is critical for your client and for your community to insist on a *cy pres* distribution for any funds that would otherwise go unclaimed or undistributed. *Cy pres* awards allow the court to shape settlement terms to honor the intended purpose as closely as possible when further distribution is either impossible or inefficient. The doctrine is also beneficial to lawyers involved in the settlement, as it helps meet fiduciary responsibilities of lawyers to complete the distribution. Everybody benefits.

I urge you to use this toolkit to help you take advantage of opportunities to apply the principles of *cy pres* whenever appropriate.

We hope it will provide you with the information you need to take advantage of this important tool for improving access to justice for needy Californians, and helping to close the justice gap.

Thank you for your support.

Sincerely,

A handwritten signature in black ink, appearing to read "Luis J. Rodriguez". The signature is fluid and cursive, written over a light gray background.

Luis J. Rodriguez, President, Board of Trustees
State Bar of California

The “Next Best Use” of Class Action and Other Residuals

The doctrine of *cy pres* (from the French meaning "as near as possible") originated in the context of trusts, where probate courts interpreted the terms of a trust as closely as possible to the original objective of the testator when the objective was impossible, impracticable, or illegal to perform. Through the use of the *cy pres* doctrine today, third-party nonprofit organizations may receive grants or distributions of unclaimed funds not just to save a testamentary gift that would otherwise fail, but also through bankruptcy proceedings and, importantly, in class actions.

Class action lawsuits are often brought on behalf of consumers, low-income individuals and others with small claims who, acting on their own, would be unable to assert a claim effectively against large, institutional defendants. When those class actions are successful, the benefit to each individual may be small, although the benefit to the public at large is significant.

When class actions result in an award for plaintiffs, often unclaimed funds remain that for one reason or another cannot be distributed to the designated class. This may be because the class members cannot be located, or because the amount due each member of the class is too small to justify the cost of identifying, disbursing, and administering the fund to the class. When residual funds exist, justice often requires that these funds be put to their “next best” use.

Cy pres awards serve legitimate public purposes, including facilitating the resolution of complex class litigation. Legal aid organizations and the Justice Gap Fund share the goal of improving access to justice, and always are ideal candidates for *cy pres* awards, as articulated expressly in California Code of Civil Procedure § 384 and by federal case law.



CALIFORNIA LEGISLATION ENDORSES THE USE OF *CY PRES* FOR LEGAL AID.

California Code of Civil Procedure § 384

(a) It is the intent of the Legislature in enacting this section to ensure that the unpaid residuals in class action litigation are distributed, to the extent possible, in a manner designed either to further the purposes of the underlying causes of action, or to promote justice for all Californians. The Legislature finds that the use of funds collected by the State Bar pursuant to this section for these purposes is in the public interest, is a proper use of the funds, and is consistent with essential public and governmental purposes.

(b) (After all class members are paid the amount to which they are entitled pursuant to judgment and a determination of the total amount to be distributed to the class) . . . the court shall amend the judgment to direct the defendant to pay the sum of the unpaid residue, plus interest . . . to nonprofit organizations or foundations to support projects that will benefit the class or similarly situated persons, or that promote the law consistent with the objectives and purposes of the underlying cause of action, to child advocacy programs, or to nonprofit organizations providing civil legal services to the indigent. The court shall ensure that the distribution of any unpaid residual derived from multistate or national cases brought under California law shall provide substantial or commensurate benefit to California consumers.

(c) This section shall not apply to any class action brought against any public entity, as defined in Section 811.2 of the Government Code, or against any public employee, as defined in Section 811.4 of the Government Code. However, this section shall not be construed to abrogate any equitable *cy pres* remedy which may be available in any class action with regard to all or part of the residue.

(emphasis added)

Federal Court Class Actions: When *Cy Pres* is Appropriate

While designation of *cy pres* to legal aid is per se appropriate in California by statute, the application of the *cy pres* doctrine under federal law has evolved as courts face complex and unique circumstances in particular cases. In the course of addressing these issues, the Federal Courts have been developing principles for determining when *cy pres* awards may be granted.

1. **Compensation of Class Members Always Comes First, then Distribution of the Remaining Funds Should Be Considered.**

Cy pres awards are only appropriate where excess funds after judgment or settlement remain and additional cash distributions to the class is not feasible. In such circumstances, the primary options available for disposition of the remaining funds are: 1) reversion to the defendant; 2) escheat to the state; or, 3) a *cy pres* award. Courts have historically preferred the distribution of residual funds through *cy pres* because reversion to the defendant is said to undermine the deterrent effect of class actions, and escheating to the state benefits only the general public indirectly. *Cy pres* awards allow courts to distribute residual funds to reasonably approximate and benefit the interests pursued by the class action for class members.

2. ***Cy Pres* Award Recipients Should “Reasonably Approximate” the Interests of the Class.**

In determining whether proposed distributions “reasonably approximate” the interests of the class members, courts have considered a number of factors, including: the purposes of the underlying statutes claimed to have been violated; the nature of the injury to the class; the characteristics and interests of the class members, including their geographical scope; the reason that settlement funds were unclaimed; and, the closeness of the fit between the class and the *cy pres* recipients.

3. **Conflicts of Interest and the Appearance of Impropriety Should be Avoided in Applying Recognized Rules.**

Courts should not provide for a *cy pres* award that would benefit any of the parties or their counsel or that would benefit a recipient with whom such parties or counsel have a clear affiliation or from which they would personally benefit. Such an analysis is not unduly burdensome or challenging for the court to undertake and should address concerns of potential abuse of the doctrine. The court can avoid any specter of judicial bias by allowing the parties or counsel to initially propose the charities, and offer suggestions if counsel fail to propose charities that fall within the “reasonably approximate” criteria. Of course, in California, any concerns regarding conflict can be addressed by designating the funds to the Justice Gap Fund, administered by the State Bar of California for the benefit of legal aid programs statewide.

4. **Public Interest and Legal Services Organizations are Appropriate *Cy Pres* Recipients.**

Making *cy pres* awards to public interest and legal services organizations is a recognized solution to avoid awards that seem to “target” the settling defendants and to ensure that funds go to worthy organizations. Federal and state courts throughout the country have long recognized that organizations that provide access to justice for low-income, underserved, and disadvantaged people are appropriate beneficiaries of *cy pres* distributions from class action settlements or judgments. Such awards to public interest and legal aid organizations are based on one of the common underlying premises for all class actions, which is to make access to justice a reality for people who otherwise would not be able to obtain the protections of the justice system.

Please consider a *cy pres* award the next time you are in the process of settling a class action suit, or dealing with a residual fund in another appropriate case.

Practice Points and Tips



1. Raise the topic of residual provisions early

Raising the issue of a class action or other residual amounts relatively early in settlement negotiations can have a positive impact on the process. Some defendants may find the prospect of paying money to settle a case more palatable when they consider that some of the money will benefit a good cause.

2. Always consider whether there are funds that can be made available

Counsel should always consider whether there are funds that can be made available for court awards to legal aid. The decision to make a residual award in a class action most often comes during the settlement process.

3. Make sure your agreements regarding *cy pres* are memorialized in the settlement agreement or court order

Counsel should make sure that *cy pres* distribution agreements are properly memorialized to ensure that the distribution occurs as a matter of course by the administrator (see sample wording on pages 12-13).

4. Consider the publicity angle

The driving force for class action residual awards to legal aid programs is often plaintiffs' counsel, but defense counsel also frequently welcome the award as a way for their clients to resolve a case and obtain some positive publicity from the settlement.

Counsel should always consider whether eligible residual funds can be made available for court awards to legal aid, whether by direct award to one or more of the organizations identified on page 11, or through a contribution to the Justice Gap Fund for the benefit of all of those organizations.

5. Designate the Justice Gap Fund, administered by the State Bar of California, to expand justice

- **Avoid Conflicts of Interest.** The Bar does not represent parties in Court, virtually eliminating any conflict of interest for either the Court or the Defendant.
- **Benefit a Broad Spectrum of Communities.** The Justice Gap Fund is disbursed to the network of almost 100 legal aid organizations that provide or support civil legal services without charge to low-income Californians in all 58 Counties.
- **Leverage Key Partnerships.** Legal aid organizations leverage resources through creative partnerships with the courts, government agencies, community organizations, law schools, law firms, and others, to expand access to justice.
- **Fund Quality.** The State Bar has decades of experience as a grant-making organization, working under the oversight of the Legal Services Trust Fund Commission.
- **Join over 21,000 Individuals and Institutions that Support the Justice Gap Fund.** Since 2010, more than 21,000 lawyers have contributed to the Justice Gap Fund. Throughout California, some of the largest law firms participate annually in challenges to encourage their lawyers to contribute to the Justice Gap Fund. The State Bar Board of Trustees, the Judicial Council, local bar associations, Senators Steinberg and Evans, and Assemblymember Wieckowski have all passed resolutions declaring October as Campaign for Justice Month.

Legal Aid Supports “Justice for All” but Meets Only a Fraction of the Need

No matter where your class action case is, and over a diverse array of subject matters, there is a legal services provider in that California region.

The Legal Services Trust Fund Program of the State Bar administers grants to legal aid organizations in every county in the State. Every population group and geographic region is touched by the services of legal aid providers.

California is fortunate to have almost 100 legal aid organizations to provide quality legal aid to people who otherwise would have nowhere to turn. These programs also leverage the talent and generosity of the private bar in order to provide critical services that benefit poor individuals and nonprofit organizations serving local communities.

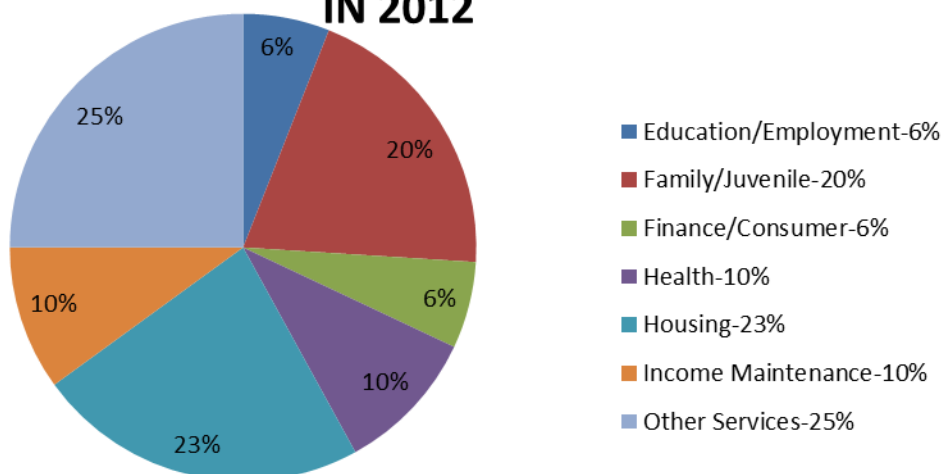
Unfortunately, despite best efforts, there remains a profound justice gap. Federal and state funding for legal aid has declined dramatically in recent years. There have also been drastic reductions in IOLTA (Interest on Lawyers’ Trust Accounts) funding as a result of historically low interest rates. The resulting chasm between those who need access to justice, and those who can get it, is called “the justice gap.”

Substitute funding from sources such as residual and *cy pres* awards can provide a critical foundation in generating funds for legal service programs who rely on our help to achieve fundamental fairness.

In 2007, the Legal Services Corporation (LSC) completed a national comprehensive study of the civil legal needs of low-income Americans and issued a report, *Documenting the Justice Gap in America: The Current Unmet Civil Legal Needs of Low-Income Americans*. The study found that for the vast majority of low-income Americans, the need for civil legal assistance is not being met by existing programs.

The failure of wages to keep up with inflation, the escalating cost of housing, and the widening income divide between rich and poor, is keeping many basic necessities beyond the reach of many in our state. Many Californians do not have the resources to obtain legal representation for the myriad of problems affecting them every year, such as domestic violence, loss of housing and employment, and discrimination. To exacerbate the problem, other major impediments to access to justice include scarcity of legal services in rural areas, language access issues, and the rapidly increasing rate of poverty.

LEGAL HELP OFFERED BY CALIFORNIA'S LEGAL AID PROGRAMS IN 2012



In California

To be eligible for legal aid, an individual must earn no more than \$14,000 a year or \$30,000 for a family of four.

More than half of the 8 million Californians who qualify for federal legal aid are turned away due to lack of resources.

There is one legal aid lawyer for every 8,316 Californians who qualify for legal aid.

Examples of Class Action Residual Awards

In California, and across the country, class action residuals have been successfully designated in both Federal and State Court to fund civil legal services for the poor. In 2011, more than \$5.3 million in *cy pres* funds in federal and state court actions were designated to California civil legal aid organizations. There also is a growing history of directing awards to the State Bar of California's Justice Gap Fund, which incepted in 2008, to fund almost 100 legal aid organizations in California. *Cy pres* awards to legal aid organizations have been approved by courts in a broad array of contexts. Below are a few examples:

- In **Lavender v. Skilled Health Care Group**, in the Superior Court, County of Humboldt, a class of 32,000 plaintiffs received a \$677 million verdict against the nursing home group for failure to comply with regulations governing the safety and care of residents in long term care facilities. Several California legal aid organizations received *cy pres*, including one organization that received \$1.45 million, which the judge approved for implementing a four-year statewide Resident Rights Campaign. A second distribution of \$1.2 million to the same organization resulted in development of a financial abuse prevention program. Another legal aid organization received \$100,000 to support advocacy and legal education to patients in long term care facilities.
- In **The American Honda Auto Finance coordinated cases**, before the Superior Court, County of San Diego, the defendants identified recipients for 50% of the funding, while the class representatives through counsel Chavez & Gertler and Kemnitzer, Barron & Krieg, LLP identified 11 recipients, including 9 California legal aid organizations statewide that each received \$104,579.
- **Smokeless Tobacco Cases I-IV**: In 2009, the Superior Court in San Francisco approved a settlement totaling \$96 million, including the request of plaintiff, represented by Hadsell & Stormer, to distribute *cy pres* to 106 charities, including 34 IOLTA-funded legal aid organizations that together received almost \$14 million in *cy pres*.
- In **Velez v. Novartis Pharmaceuticals Corp.**, a federal jury in New York concluded that defendant pharmaceutical company had discriminated against its female sales force employees nationwide. After a jury award of over \$250 million, the parties settled the case for \$152.2 million, to be distributed among the class of 6,200 women, and an agreement to change company practices. The judge approved *cy pres* distributions totaling \$164,000 to seven organizations that focused on women's and workers' rights, including a California State Bar funded support center.

In California, California Code of Civil Procedure § 384 provides that residual funds may be designated to the State Bar of California for legal aid, or directly to any nonprofit organization that provides legal aid. There is a growing history of lawyers and judges directing *cy pres* awards to the State Bar's "Justice Gap Fund," which was created by the legislature in 2008, and is administered by the Legal Services Trust Fund Program at the State Bar of California. The State Bar has collected over \$1.5 million in *cy pres* designations to qualified legal aid organizations that provide legal services to indigent people in every county and across a range of substantive areas. The State Bar recognizes firms that designate *cy pres* funds to legal aid on the Campaign for Justice website at www.CAforJustice.org.

A CASE STUDY

In *Walker v. Westlake Financial Services*, Westlake sent notices of intent relating to motor vehicle repossession that did not comply with California consumer protection laws. After distribution to the class members, funds were distributed as *cy pres*. Among the awards, one legal aid organization received \$135,982, which was used to support its consumer law project. That project leverages the work of pro bono attorneys to champion the rights of low-income consumers who need help to avoid the impact of auto fraud, home equity scams, home improvement fraud and identity theft. Supported by this award, the local legal aid organization's consumer law team of six attorneys leveraged the power of more than 300 pro bono attorneys to provide millions in free legal services to help vulnerable consumers.



"People lose their homes, their cars, and their financial security every day because they become victims and don't have an attorney to fight for them. *Cy pres* awards for legal services help preserve fairness in our justice system and protect consumers."

Hernán Vera, President/CEO, Public Counsel, a legal aid organization in Los Angeles and a member of the Board of Trustees, State Bar of California

Caselaw and Other Resources

Caselaw on the Appropriateness of *Cy pres*, including as a Designation to Further Access to Justice

In re Baby Prods. Antitrust Litig., 708 F.3d 163, 173 (3d Cir. 2012). Good background on *cy pres* doctrine generally and rejects broad-based challenges to use of *cy pres* awards, but ultimately overturned *cy pres* award at issue, finding that the settlement provided insufficient funds to class members;

Dennis v. Kellogg, Co., 697 F.3d 858 (9th Cir. 2012), noting that *cy pres* distribution to food-related organizations was inappropriate because it would not benefit class members, and that distribution to consumer protection organizations would further the concerns embodied by underlying statutes in the case;

Nachshin v. AOL, LLC, 663 F.3d 1034 at 1036-37 (9th Cir. 2011) noting that distribution of \$2 million to 66 million class members would have entitled each member to approximately three cents, making distribution to class members cost prohibitive, and that *cy pres* distribution should go to an organization that would further the objective of the underlying statutes and benefit the interests of silent class members;

Hughes v. Kore of Indiana Enterprise, 731 F.3d 672, 677, (7th Cir. 2013) pointing out that “class action litigation, like litigation in general, has a deterrent as well as a compensatory objective” and thereby approving a *cy pres* award of \$10,000 to a consumer protection charity, with no payments to class members;

In re Lupron Mktg. & Sales Practices Lit., 677 F.3d 21, 33 (1st Cir. 2012), addressing for the first time the procedural and substantive standards for distribution of funds under the *cy pres* doctrine. In determining whether proposed distributions “reasonably approximate” the interests of the class members, it identified a number of factors, including: the purposes of the underlying statutes claimed to have been violated; the nature of the injury to the class; the characteristics and interests of the class members, including their geographical scope; the reason that settlement funds were unclaimed; and, the closeness of the fit between the class and the *cy pres* recipients;

Jones v. Nat’l Distillers, 56 F.Supp.2d 355, 359 (SDNY 1999), citing multiple cases where a class action *cy pres* distribution designed to improve access to legal aid was found appropriate;

Glen Ellyn Pharmacy Inc. v. Roche-Posey Inc., 11-968, 2012 WL 619595 (N.D. 2012), addressing unsolicited faxes for sunscreen products, awarded *cy pres* fund to legal aid organizations, giving reasons for each award;

In re EasySaver Rewards Litig., 921 F.Supp.2d 1040 (S.D. Cal. 2013), allowing *cy pres* distribution to three universities, including a law school, for the creation of internet privacy and security programs that would benefit internet consumers such as the class members.

Articles and Other Resources

Amici Curiae Brief of the National Legal Aid and Defender Association and the Association of Pro Bono Counsel in *Oetting v. Jacobson, PC.* (8th Cir., E.D. MO), The brief includes detailed points and authorities making the case for *cy pres* distribution to legal aid, including a four-page table of authorities.

Thomas A. Doyle, Residual Funds in Class Action Settlements: Using ‘Cy pres’ Awards to Promote Access to Justice, *The Federal Lawyer*, July 2010, at 26-27, overview of case law and other authorities that support *cy pres* distributions to legal aid and access to justice;

Bob Glaves and Meredith McBurney, Cy pres Awards, Legal Aid and Access to Justice: Key Issues in 2013 and Beyond, *MIE Journal*, Spring 2013. Includes appendix with wealth of references to articles and cases about *cy pres* generally and its application to legal aid organizations

What Can a Court Do with Leftover Class Action Funds? Almost Anything! *The Judges Journal*, summer 1996, p. 20.

Cy Pres Awards in Other Types of Proceedings

Bankruptcy Court:

In re Xpedior Inc., 354 B.R. 201 (N.D. Ill, 2006). \$707,000 surplus remaining in bankruptcy case after all claims were paid was distributed to five charities, including three legal aid entities;

Bankruptcy’s Spare Change, *Wall Street Journal*, March 11, 2012; Discusses problem of unclaimed surplus money from Chapter 11 Bankruptcy cases and the client’s efforts to transfer the money to charity, including legal aid entities.

Rule 2011-1 of Local Rules of U.S. Bankruptcy Court (S.D. Florida). Rule sets forth procedure for unclaimed funds in bankruptcy cases.

Court-ordered Sanctions:

In 2010, a Cook County (Chicago) Judge ordered one of the parties to pay \$1.1 million as a sanction for violating a previous court ruling to preserve documents in a lawsuit, and used Illinois *cy pres* statutes as a model for designating recipients of the funds. A Chicago legal aid organization received half of the funds.

Cy Pres Funds Awarded to Multiple Entities

(Examples of Methods of Distribution)

Synthroid Mktg. Litig., U.S. District Court for the Northern District of IL, 2011. *Cy pres* distribution in a national class action lawsuit regarding pharmaceuticals, with a mix of local and national legal aid organizations and other organizations receiving a share of the award;

Susan Miller et al. v. Royal Maccabees Life Ins. Co., Circuit Court of Cook County, IL, 2008. *Cy pres* distribution in a national class action settlement involving a rate increase on life insurance policies. Illinois legal aid programs received \$1.8 million; another \$1.8 million was distributed to 111 Legal Services Corporation-funded programs around the country.

Sample Settlement Provisions and Orders

As a general rule, class action settlements should provide for a *cy pres* distribution of settlement funds when such funds cannot be distributed to the class. Counsel should negotiate a provision that designates a *cy pres* recipient(s). Below are sample provisions.

Sample Settlement Agreement Wording: Unclaimed Funds/*Cy pres*

The Parties recognize that there likely will be some amount of unclaimed funds after disbursement of the Settlement Fund for the payment of valid claims, and payment of costs and expenses of administration. The Parties agree the unclaimed funds resulting from the failure to file claims and from the denial of claims filed by Class members shall be distributed to *Cy pres* recipients as set forth hereinafter. The portion of the Settlement Fund distributed to *Cy pres* recipients (hereinafter “Recipient”) shall be referred to as “Recipient’s Share.” The parties have agreed the unclaimed funds available for *Cy pres* recipients shall be divided among the following organizations: (Insert Name(s) of Recipient Organizations)

Sample Order: Language for Final Approval Order for Class Action Settlements (Residual Funds)

WHEREAS, on (date), this matter came before the Court for hearing on Plaintiffs’ Unopposed Motion to Distribute the *Cy pres* Fund;

WHEREAS, on (date), this Court granted final approval of the \$__ Settlement Agreement entered into by Class Plaintiffs and Defendants in the captioned matter, and at that time overruled all objections to the Settlement Agreement and found that the plan of allocation (which provides that \$__ of the Settlement Fund be distributed to class members; and that any funds remaining in the Settlement Fund after payment of claims, attorneys’ fees and costs, taxes, settlement administration costs, and any class plaintiff incentive awards, will be distributed as *cy pres*) is fair, reasonable, and adequate;

WHEREAS, as directed by the court, the parties have met and conferred and reviewed applications submitted by the *cy pres* candidates, and now provide the Court with a joint recommendation on a plan of distribution for the *Cy pres* Fund, and have provided the court with a list of organizations, and a description of the work performed by each candidate;

The Court having considered all papers filed and proceedings herein,

The Court finds that (names of Legal Services Organization) are eligible organizations and the Court directs that __% of any Residual Funds from the Settlement shall be distributed to (Legal Services Organizations).

The Court further finds that the Justice Gap Fund held by the State Bar of California is an eligible *cy pres* recipient and the Court further directs that __% of any Residual Funds from the Settlement shall be distributed to the State Bar of California Justice Gap Fund.

These distributions shall be made in a timely manner and in any event no later than ____ calendar days from the date of this Order without further Order of the Court.

Plaintiff’s Motion to distribute the *cy pres* Fund as set forth above is hereby GRANTED, and this Court hereby approves of the *cy pres* plan of allocation, and finds that it is fair, reasonable and adequate to the class.

Sample Order: Order Releasing Reserved Attorneys’ Fees and Payment of *Cy Pres* Award

Having read the parties’ Joint Statement, the Declaration of the Settlement Administrator, and considered these factors as part of the Court’s Ordering of a Final Accounting Hearing, and good cause appearing therefore, the Court hereby Orders, within 5 days of the date of this Order, the Settlement Administrator to remit (1) to Class Counsel \$__ in attorneys’ fees that was reserved pursuant to the Court’s Order granting final approval of the settlement; and within 7 days following the date on which all remaining settlement checks have become void, (2) to the *cy pres* beneficiary the residual pursuant to the terms of the Settlement Agreement.

IT IS SO ORDERED.

Sample Order: Order Granting Cy Pres Distribution

The parties hereby stipulate as follows:

WHEREAS, the Court granted final approval of the parties settlement on (date);

WHEREAS, on (date), the Court-appointed Claims Administrator ____, printed and mailed ____ Settlement Award Payments totaling \$____ and approximately __% of the net settlement fund was distributed successfully and __% of the settlement checks were cashed, and all reasonable efforts were taken to locate all class members;

WHEREAS, there was an expected residual from the first distribution of \$____ in unreturned taxes and uncashed checks; and

WHEREAS, on (date), the Court ordered a second distribution of the residual to eligible Class Members; and

WHEREAS, on (date), (name of class administrator) mailed ____ checks totaling \$____ as part of the second distribution;

WHEREAS, Section __ of the Settlement Agreement provides that any unclaimed funds may be redistributed to class members or deposited into a Cy Pres Fund; and

WHEREAS, (name of class administrator) has testified that, not counting unreturned taxes, the residual is currently \$____, and that it is prepared to issue the *Cy Pres* distribution upon Order of the Court; and

WHEREAS, the Parties agree that the residual should be distributed at this time to the *Cy pres* recipients: (identify recipients), according to the terms of the Settlement Agreement approved by the Court;

THEREFORE, the Parties stipulate that any residual remaining on the date of this Order shall be distributed to the *Cy Pres* beneficiaries according to the terms of the Settlement Agreement within five (5) Court days of the date of this Order. Further, any additional funds received by the Claims administrator, whether through the return of taxes, uncashed checks, or for any other reason shall be distributed in the same manner to the *Cy Pres* beneficiaries within (5) days of receipt by the Claims Administrator.

Sample Order in the US District Court, for the Northern District of California

Upon consideration of the parties' Joint Motion and Order to Create Qualified Settlement Fund, it is ordered, judged, and decreed that:

The payment set out in paragraph _____ of the Master Release Agreement will be made to the Settlement Administrator designated in the Master Release Agreements, ____, and that the account created by _____ for receipt of these funds will be deemed a Qualified Settlement Fund in accordance with Section 468B of the United States Internal Revenue Code (26 U.S.C. § 468B) and the regulations promulgated thereunder (26 C.F.R. § 1.468B-1).

The Settlement Administrator agrees to act strictly in accordance with its obligations as described in the Master Release Agreement.

The Qualified Settlement Fund created by this Order will be subject to the continuing jurisdiction of this Court.

Sample Order: Cy Pres Provision Within Order Approving Receiver's Final Report and Account, etc.

If the remaining funds in the receivership estate exceed \$____ after (date), the Receiver shall thereafter disburse all remaining funds in a second pro rata distribution to the approved general unsecured claimants who did in fact cash their checks timely. If the remaining funds in the Receivership estate are \$____ or less on (date), the Receiver shall pay those funds to (identify legal aid *cy pres* recipient).

Legal Aid Programs in California

The following programs help more than 250,000 of the most vulnerable Californians navigate the legal system each year. Each program is an expert in a specific service area and many collaborate with each other to help create and protect fairness to all. All of these programs, as well as the Justice Gap Fund at The State Bar of California, are appropriate recipients of *cy pres* funds, permitted by C.C.P. Section 384, or under federal case law. To access links to the websites of each of these organizations, go to <http://www.CAforjustice.org/about/organizations>.

Affordable Housing Advocates
AIDS Legal Referral Panel
Alameda County Bar Association Volunteer Legal Services Corporation
Alameda County Homeless Action Center
Alliance for Children's Rights
Asian Americans Advancing Justice-Asian Law Caucus
Asian Americans Advancing Justice-Los Angeles (fka Asian Pacific American Legal Center)
Asian Pacific Islander Legal Outreach
Bay Area Legal Aid
Benchmark Institute
Bet Tzedek Legal Services
California Advocates for Nursing Home Reform
California Indian Legal Services
California Rural Legal Assistance Foundation
California Rural Legal Assistance, Inc.
California Women's Law Center
Casa Cornelia Law Center
Center for Health Care Rights
Center for Human Rights and Constitutional Law
Central California Legal Services
Centro Legal de la Raza
Chapman University School of Law Family Violence Clinic
Child Care Law Center, Inc.
Children's Rights Clinic at Whittier Law School
Coalition of California Welfare Rights Organizations, Inc.
Community Legal Services in East Palo Alto
Contra Costa Senior Legal Services
Disability Rights California
Disability Rights Education and Defense Fund
Disability Rights Legal Center
East Bay Community Law Center
Elder Law & Advocacy
Family Violence Law Center
Greater Bakersfield Legal Assistance, Inc.
Harriett Buhai Center for Family Law
Immigrant Legal Resource Center
Impact Fund
Inland Counties Legal Services
IELLA Legal Aid Project
Inner City Law Center
Insight Center for Community Economic Development
Justice & Diversity Center of the San Francisco Bar Association
La Raza Centro Legal
Law Foundation of Silicon Valley
Lawyers' Committee for Civil Rights of the San Francisco Bay Area
Learning Rights Law Center
Legal Aid Foundation of Los Angeles
Legal Aid Foundation of Santa Barbara County
Legal Aid of Marin
Legal Aid of Napa Valley
Legal Aid of Sonoma County
Legal Aid Society of Orange County
Legal Aid Society of San Bernardino
Legal Aid Society of San Diego, Inc.
Legal Aid Society of San Mateo County
Legal Aid Society-Employment Law Center
Legal Assistance for Seniors
Legal Assistance to the Elderly
Legal Services for Children
Legal Services for Prisoners with Children
Legal Services for Seniors
Legal Services of Northern California
Los Angeles Center for Law and Justice
Los Angeles County Bar Association Projects
McGeorge School of Law Community Legal Services
Mental Health Advocacy Services, Inc.
National Center for Youth Law
National Health Law Program
National Housing Law Project
National Immigration Law Center
National Senior Citizens Law Center
Neighborhood Legal Services of Los Angeles County
Positive Resource Center
Prison Law Office
Pro Bono Project Silicon Valley
Public Advocates, Inc.
Public Counsel
Public Interest Clearinghouse (dba OneJustice)
Public Interest Law Project
Public Law Center
Riverside Legal Aid
San Diego Volunteer Lawyer Program, Inc.
Santa Clara County Asian Law Alliance
Santa Clara University Katherine & George Alexander Community Law Center
Senior Adults Legal Assistance
Senior Citizens Legal Services
UC Davis School of Law Legal Clinics
USD School of Law Legal Clinics
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