



BayLegal
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Cy pres funds directed to BayLegal advance justice for the poor.



70 attorneys, 7 counties, 1 mission: **Equal Access to Justice.**

ADDRESSING THE MOST PRESSING NEEDS OF THE POOR.

BayLegal is the only legal aid provider legal aid services, free of charge, to low-income families throughout the seven counties of the Bay Area.

Consumer Rights

Helping consumers protect themselves by representing them in cases such as: fair credit reporting, fair debt collection practices, unfair and deceptive advertising of financial products and services, and innocent spouse tax relief.

Protecting Homes

Working to avoid homelessness and expand affordable housing by enforcing housing laws and regulations.

Ending Domestic Violence

Providing survivors of domestic violence and sexual assault the legal assistance they need to escape the abuse and create safe and stable environments for themselves and their children.

Ensuring Economic Justice

Securing basic income and support services for those overcoming barriers to employment and education as they gain self-sufficiency.

Securing Access to Health Care

Helping individuals and families access essential health care services and insurance coverage through the Affordable Care Act.

Cy pres awards will support the free legal assistance BayLegal provides for low-income individuals and families to help them secure or preserve the most basic necessities of life: food, shelter, protection against violence, and subsistence income.

Awards can be unrestricted, for general support or be designated to fund legal assistance for a particular population or a specific area of BayLegal's work

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* recipient shall be divided among the following organization(s):

Bay Area Legal Aid (BayLegal)

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;

Bay Area Legal Aid: BayLegal is the largest provider of free civil legal aid in the Bay Area, with more than 70 attorneys and advocates providing full-scope legal representation and education to families living in poverty. BayLegal adheres to the ABA's *Standards for Providers of Legal Assistance to the Poor* and offers services in five practice areas: housing preservation, economic security, health care access, consumer law and domestic violence prevention. It is the only legal aid firm with a centralized telephone intake system that allows clients to call from any location in the Bay Area and receive immediate legal counsel in their primary language. In a recent detailed assessment by the federal Legal Services Corporation, BayLegal was singularly praised for the extraordinary quality and effectiveness of its operations and administration. Last year, through the work of its skilled professionals and 55,000 hours of supervised pro bono time, 70,000 people benefitted from BayLegal's advocacy.

The Court having considered all papers filed and proceedings herein, the Court finds that Bay Area Legal Aid is an eligible organization and the Court directs that _____% of any Residual Funds from the Settlement shall be distributed to Bay Area Legal Aid.

[For distribution to additional 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 Bay Area Legal Aid.