

Appeal No. 13-16919
(Consolidated with No. 13-16918, 13-16819, 13-16929, 13-17028, 13-17097)

IN THE
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Angel Fraley, et al.

Plaintiffs-Appellees

C.M.D., et al.

Intervenors-Plaintiffs-Appellees

Wendy Lally, et al.

Objectors-Appellants

v.

Facebook, Inc.

Defendant-Appellee

On Appeal from the United States District Court
for the Northern District of California

BRIEF OF *AMICI CURIAE* IN SUPPORT OF NEITHER PARTY
ON BEHALF OF

NATIONAL LEGAL AID AND DEFENDER ASSOCIATION, ASSOCIATION OF PRO BONO COUNSEL, LOS ANGELES COUNTY BAR ASSOCIATION, ALAMEDA COUNTY BAR ASSOCIATION, AND LEGAL AID ASSOCIATION OF CALIFORNIA AND ITS MEMBER ORGANIZATIONS ASIAN AMERICANS ADVANCING JUSTICE – LOS ANGELES, BET TZEDEK LEGAL SERVICES, CENTER FOR HUMAN RIGHTS AND CONSTITUTIONAL LAW, DISABILITY RIGHTS CALIFORNIA, DISABILITY RIGHTS & EDUCATION DEFENSE FUND, DISABILITY RIGHTS LEGAL CENTER, IMPACT FUND, INNER CITY LAW CENTER, JUSTICE & DIVERSITY CENTER OF THE BAR ASSOCIATION OF SAN FRANCISCO, LEGAL AID OF MARIN, LEGAL AID SOCIETY – EMPLOYMENT LAW CENTER, LOS ANGELES CENTER FOR LAW & JUSTICE, NATIONAL CENTER FOR YOUTH LAW, NATIONAL HOUSING LAW PROJECT, NATIONAL SENIOR CITIZENS LAW CENTER, ONEJUSTICE, PRO BONO PROJECT OF SILICON VALLEY, PUBLIC COUNSEL, PUBLIC LAW CENTER, SAN DIEGO VOLUNTEER LAWYER PROGRAM, INC., VOLUNTEER LEGAL SERVICES CORPORATION OF THE ALAMEDA

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Rules 26.1 and 29(c)(1) of the Federal Rules of Appellate Procedure, the National Legal Aid and Defender Association (NLADA), the Association of Pro Bono Counsel (APBCo), the Los Angeles County Bar Association (LACBA), Alameda County Bar Association (ACBA), and the Legal Aid Association of California (LAAC) and LAAC member organizations Asian Americans Advancing Justice – Los Angeles, Bet Tzedek Legal Services, Center for Human Rights and Constitutional Law, Disability Rights California, Disability Rights & Education Defense Fund, Disability Rights Legal Center, Impact Fund, Inner City Law Center, Justice & Diversity Center of The Bar Association of San Francisco, Legal Aid of Marin, Legal Aid Society - Employment Law Center, Los Angeles Center for Law & Justice, National Center for Youth Law, National Housing Law Project, National Senior Citizens Law Center, OneJustice, Pro Bono Project of Silicon Valley, Public Counsel, Public Law Center, San Diego Volunteer Lawyer Program, Inc., Volunteer Legal Services Corporation of the Alameda County Bar Association, and Western Center on Law & Poverty state as follows:

The NLADA is the largest national legal aid organization with more than 700 program members dedicated to ensuring access to justice for the poor through the nation's civil legal aid and defender programs. APBCo is a membership organization of over 135 partners, counsel, and practice group managers who run pro bono practices on primarily a full-time basis in more than 85 of the country's largest law firms. LACBA is one of the largest voluntary bar associations in the country with more than 20,000 members. ACBA is a voluntary bar association serving nearly 1,500 members in Alameda County. LAAC is a statewide membership association of more than 80 public interest law nonprofits, including Asian Americans Advancing Justice – Los Angeles, Bet Tzedek Legal Services, Center for Human Rights and Constitutional Law, Disability Rights California, Disability Rights & Education Defense Fund, Disability Rights Legal Center, Impact Fund, Inner City Law Center, Justice & Diversity Center of The Bar Association of San Francisco, Legal Aid of Marin, Legal Aid Society – Employment Law Center, Los Angeles Center for Law & Justice, National Center for Youth Law, National Housing Law Project, National Senior Citizens Law Center, OneJustice, Pro Bono Project of Silicon Valley, Public Counsel, Public Law Center, San Diego Volunteer Lawyer Program, Inc., Volunteer Legal Services Corporation of The Alameda County Bar Association, and Western Center on Law & Poverty, all of which provide free civil legal services to low-income individuals and communities throughout California.

Dated: June 6, 2014

By: s/Wilber H. Boies
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INTEREST OF *AMICI CURIAE*

The National Legal Aid and Defender Association (NLADA), the Association of Pro Bono Counsel (APBCo), the Los Angeles County Bar Association (LACBA), Alameda County Bar Association (ACBA), and the Legal Aid Association of California (LAAC) and LAAC member organizations Asian American Advancing Justice – Los Angeles, Bet Tzedek Legal Services, Center for Human Rights and Constitutional Law, Disability Rights California, Disability Rights & Education Defense Fund, Disability Rights Legal Center, Impact Fund, Inner City Law Center, Justice & Diversity Center of The Bar Association of San Francisco, Legal Aid of Marin, Legal Aid Society - Employment Law Center, Los Angeles Center for Law & Justice, National Center for Youth Law, National Housing Law Project, National Senior Citizens Law Center, OneJustice, Pro Bono Project of Silicon Valley, Public Counsel, Public Law Center, San Diego Volunteer Lawyer Program, Inc., Volunteer Legal Services Corporation of the Alameda County Bar Association, and Western Center on Law & Poverty (collectively, “LAAC Members”) are public interest legal services organizations and have a substantial interest in ensuring that legal services organizations are recognized as appropriate recipients of *cy pres* awards in class action settlements.

Amici contacted all parties to this appeal, and no party objected to the filing of this amicus brief. This brief was authored entirely by counsel for the amici. This brief is submitted *pro bono*, by counsel of record. No party, or any counsel for a party,

authored this brief, in whole or in part, nor did any party, party's counsel or any other person or entity contribute money to fund the preparation or submission of this brief.

Cy pres awards in class action settlements provide a critical funding source for legal services organizations. Funding through *cy pres* awards is especially important for legal services organizations because of the dramatic decline in federal and state funding for legal aid and IOLTA (Interest on Lawyer Trust Accounts) funding as a result of the economic recession. Without sufficient substitute funding from sources such as *cy pres* awards in class actions, legal services organizations will not have the resources to meet the need for access to justice by the underprivileged and disadvantaged in our country. It is therefore critical that this Court acknowledge that legal services organizations are appropriate recipients of *cy pres* awards as part of providing further guidance to district courts through the opinion in this appeal.

The NLADA is the largest national nonprofit organization dedicated to ensuring access to justice for the poor through the nation's civil legal aid and defender programs. NLADA has more than 700 program members; 103 of these members provide civil legal assistance on a local or statewide basis in the Ninth Circuit. NLADA's members include civil legal aid providers who are funded by a variety of sources, including *cy pres* awards, to address the overwhelming need for access to justice among the nation's poor. NLADA works with its member organizations, the American Bar Association and other access to justice organizations to encourage *cy*

pres awards to organizations which address the huge justice gap for low-income persons in the civil justice system in the United States.

APBCo is a membership organization of over 135 partners, counsel, and practice group managers who run pro bono practices in more than 85 of the country's largest law firms. APBCo has 17 members based in and some 40 members with law firm offices within the Ninth Circuit. APBCo is dedicated to improving access to justice by serving as a unified voice for the national law firm pro bono community. APBCo member firms provide millions of hours of pro bono assistance each year to low-income clients throughout the United States. The members of APBCo rely on the expertise of legal services organizations to help manage successful pro bono programs at the nation's largest law firms, to screen and refer pro bono clients, and to provide training and on-going mentoring and to support and structure innovative programs that meet the needs in their communities - all in addition to the legal service organizations' provision of direct legal services.

LACBA is one of the largest voluntary bar associations in the country, with more than 20,000 members. As part of its mission to advance justice and meet the professional needs of lawyers, LACBA has been a long-time supporter and sponsor of legal services for the poor. The Los Angeles County Bar Foundation, which supports LACBA's work, has received *cy pres* awards in both state and federal class action settlements.

ACBA is a voluntary bar association serving nearly 1,500 members in Alameda County. ACBA's mission is to promote excellence in the legal profession and to facilitate equal access to justice. All of its charitable and pro bono work is directed towards expanding legal services for low-income and underserved communities. The Volunteer Legal Services Corporation of ACBA has received *cy pres* awards in class action settlements.

LAAC is a statewide membership association of more than 80 public interest law nonprofits which provide free civil legal services to low-income people and communities throughout California. LAAC member organizations, including the LAAC Members who have joined as amici, provide legal assistance on a broad array of substantive issues and serve a wide range of low-income and vulnerable populations. LAAC and its members receive *cy pres* awards in class action settlements.

SUMMARY OF ARGUMENT

The role of an amicus is to assist this Court in making a thorough and even-handed analysis of the legal issues before it. To that end, amici submitting this brief in support of neither party believe it helpful to present a broader perspective on *cy pres* awards in class actions than is found in the briefs of the parties. This amicus submission will not argue the specifics of whether the district court's decision should be affirmed or reversed and remanded. This brief will instead (a) present an analysis of the factors that courts should examine in reviewing proposed *cy pres* awards in class action settlements and (b) discuss reasons why this Court should explicitly recognize that legal services organizations are appropriate recipients of *cy pres* awards.

In a Statement which accompanied the Supreme Court order denying the certiorari petition for review of this Court's 2012 *Lane v. Facebook* decision, Chief Justice Roberts pointed out that the Supreme Court has never addressed:

... fundamental concerns surrounding the use of [*cy pres*] remedies in class action litigation, including when, if ever, such relief should be considered; how to assess its fairness as a general matter; whether new entities may be established as part of such relief; if not, how existing entities should be selected; what the respective roles of the judge and parties are in shaping a *cy pres* remedy; how closely the goals of any enlisted organization must correspond to the interests of the class; and so on.

Marek v. Lane, 134 S.Ct. 8, 9, 187 L. Ed.2d 392 (Mem) (2013) (statement of Chief Justice Roberts). Those questions are inherent in every court opinion approving, affirming or reversing a class action settlement involving a *cy pres* award. The purpose

of this amicus submission is to suggest a systematic approach to addressing those questions.

Cy pres awards serve legitimate public purposes and facilitate the resolution of complex class litigation. While such awards should be consistent with clearly identified best practices, the availability and effectiveness of *cy pres* awards should not be eroded by unreasonably narrow and mechanical constraints or tests.

Among the issues that courts should consider before making *cy pres* awards are (1) the objective of compensating class members first, (2) the feasibility of distributing settlement proceeds to class members, (3) whether *cy pres* recipients reasonably approximate the interests of the class, (4) the significance of the location of the litigation and geographic make-up of the class, and (5) avoiding conflicts of interest or the appearance of impropriety in *cy pres* distributions.

Finally, the courts should give careful consideration to the important role of legal services organizations which provide representation to countless individuals who seek access to justice. Legal services organizations serve the same purpose as class actions in our legal system: to protect the legal rights of those who would otherwise be unrepresented. Stated simply, legal services organizations are appropriate recipients of *cy pres* awards.

**ARGUMENT: LEGAL SERVICE ORGANIZATIONS
ARE GENERALLY APPROPRIATE *CY PRES* RECIPIENTS**

**I. THIS COURT'S *CY PRES* DECISIONS HAVE NOT ADDRESSED
CY PRES AWARDS TO LEGAL SERVICES ORGANIZATIONS**

A. This Court's *Cy Pres* Decisions

This Court has been presented with a sequence of appeals in which objectors raised arguments against both the structure of proposed class action settlements and the choice of *cy pres* recipients. In the opinions deciding those cases, this Court has addressed the propriety of settlements without cash distributions to class members and has approved or rejected specific selections of *cy pres* recipients. This Court has not expressly addressed *cy pres* awards to legal services organizations as an effective device in class action administration which also serves broader public interests.

The first of this Court's widely cited opinions about *cy pres* awards is *Six Mexican Workers v. Arizona Citrus Growers*, 904 F.2d 1301 (9th Cir. 1990). That case was not actually a class action settlement, but rather involved a \$1.8 million statutory damages judgment for violating the Farm Labor Contractors Registration Act. The district court ordered distribution of the damages award to some 1,300 undocumented Mexican workers, with any unclaimed funds to be distributed through a *cy pres* award to the Interamerican Fund for "human assistance projects" in Mexico. *Id.* at 1307. This Court, after a discussion of the difference between fluid recoveries (to persons dealing with the defendant in the future who are not necessarily class members) and *cy pres* awards, *id.* at 1305, offered the following general guidance to the district courts:

“The district court’s choice among distribution options should be guided by the objectives of the underlying statute and the interests of the silent class members,” *id.* at 1307. Applying this general rule, this Court found that the case was appropriate for a *cy pres* distribution, instead of escheat to the federal government or reversion to the defendants. *Id.* at 1307-09. However, this Court reversed and remanded the case because the *cy pres* proposal “benefits a group far too remote from the plaintiff class of Mexican workers,” for social services in areas “where the class members may live” through an organization with no substantial record of service. In short, “the plan does not adequately target the plaintiff class and fails to provide adequate supervision over distribution.” *Id.* at 1309.

Thirteen years after *Six Mexican Workers*, this Court rejected a disability public accommodations class action settlement with a *cy pres* component in *Molski vs. Gleich*, 318 F.3d 937 (9th Cir. 2003). This Court found that the district court abused its discretion by approving a settlement which provided injunctive relief and legal fees, but no right to opt out and no notice to class members that substantial monetary damages claims were being released. *Id.* 956. This Court specifically found that *cy pres* awards to sixteen disability organizations were inappropriate where there was no evidence that individual damages claims by class members would be too burdensome to prove or too costly to distribute. *Id.* at 954-55.

In re Bluetooth Headset Products Liability Litigation, 654 F.3d 935 (9th Cir. 2011), is frequently cited among this Court’s recent opinions reversing and remanding class

action settlements with *cy pres* awards. But the *In re Bluetooth* opinion did not specifically address *cy pres* awards. Instead, this Court remanded the case because the settlement agreement involved no significant relief for the class (adding “acoustic safety information” to Bluetooth packaging), provided for significant attorneys’ fees and presented several “warning signs” of a suspicious settlement. *Id.* at 947-48. This Court directed the district court to reconsider the attorneys’ fees award, with no discussion about the proposed *cy pres* awards. *Id.* at 949-50.

Nachshin v. AOL, LLC, 663 F.3d 1034 (9th Cir. 2011), is widely cited for the approval of class action settlements with no cash component for class members – and also for the idea that *cy pres* awards in national class actions should not go only to local organizations. *See generally In re Baby Prods. Antitrust Litig.*, 708 F.3d 163, 180 (3d Cir. 2013); *Ira Holtzman, C.P.A. v. Turza*, 728 F.3d 682, 689 (7th Cir. 2013). *Nachshin* involved consumer fraud claims about “footers” inserting promotional messages into email sent to AOL subscribers. 663 F.3d at 1036. The agreed remedy was notices to AOL members, with no cash settlement fund for class members. *Id.* at 1037. With a maximum potential unjust enrichment recovery of \$2 million and a class of 66 million AOL subscribers, a cash distribution of settlement proceeds to class members (three cents per class member) was not feasible. *Id.* at 1036-1037. After agreeing with a mediator that they could not identify any charitable organization related to the on-line advertising issues in the case, the parties decided on \$25,000 *cy pres* awards to the Boys and Girls Club of America Los Angeles and Santa Monica chapters, the Legal Aid

Foundation of Los Angeles (LAFLA) and the Federal Judicial Center Foundation.

This Court reversed and remanded the case for reconsideration of the *cy pres* awards, applying this test:

Cy pres distributions must account for the nature of the plaintiffs' lawsuit, the objectives of the underlying statutes, and the interests of the silent class members, including their geographic diversity. The *cy pres* distributions here do not comport with our *cy pres* standards. While the donations were made on behalf of a nationwide plaintiff class, they were distributed to geographically isolated and substantively unrelated charities.

Id. at 1036. Notably, there was no separate discussion of the *cy pres* award to LAFLA or whether legal services organizations are generally appropriate recipients of *cy pres* awards.

Dennis v. Kellogg Co., 697 F.3d 858 (9th Cir. 2012), involved consumer fraud claims about cereal advertising. The class settlement provided for payments to cereal purchasers capped at \$15 per class member from a \$2.75 million settlement fund, with any undistributed funds going to unidentified charities, and a \$5 million distribution of Kellogg food items to "charities that feed the indigent." *Id.* at 862-863. This Court reversed and remanded, pointing out that "[n]ot just any worthy recipient can qualify to be an appropriate *cy pres* beneficiary," because "we require that there be a 'driving nexus between the plaintiff class and the *cy pres* beneficiaries.'" *Id.* at 865 (citing *Nachshin*, 663 F.3d at 1038). The opinion suggested that appropriate *cy pres* recipients for this case were not charities that feed the needy, but organizations dedicated to protecting consumers. *Id.* at 867.

Most recently, in *Lane v. Facebook, Inc.*, 696 F.3d 811 (9th Cir. 2012), this Court approved a settlement that seems to have been tailor made to fit the tests this Court applied in rejecting the settlements in *Nachshin* and *Dennis*. The claims concerned allegedly illegal collection and use of information about on-line activities of Facebook participants without their permission. *Id.* at 817. Facebook agreed to permanently terminate the particular program (but not the practice of collecting such information) and to donate \$6.5 million to establish a new foundation which would give grants to organizations involved in educating consumers about on-line information protection. *Id.* The settlement agreement provided for a Facebook officer as one of three directors of the new foundation – and for the plaintiffs’ class counsel and defense counsel to be its “board of legal advisors.” *Id.* This Court found that the proposed *cy pres* award properly accounted for the factors outlined in *Nachshin*, because the remedy “bears a direct and substantial nexus to the interests of absent class members,” and rejected the objections, finding that the board of directors appointment and legal counsel arrangements were the “offspring of compromise,” and that the new foundation would use funds to benefit class members (unlike the *Six Mexican Workers* situation). *Id.* at 820-22.

Judge Kleinfeld’s dissent argued that “[t]his settlement perverts the class action into a device for depriving victims of remedies for wrongs, while enriching both the wrongdoers and the lawyers purporting to represent the class.” *Id.* at 826. A rehearing en banc was denied, but with a dissenting opinion by six other judges of this

Court that was critical of the *cy pres* award. *Lane v. Facebook, Inc.*, 709 F.3d 791 (9th Cir. 2013).

B. Questions That Need to be Addressed

This Court's decision in *Lane v. Facebook* was recently questioned by Chief Justice Roberts in a separate statement filed with the order denying a petition for certiorari: "Facebook thus insulated itself from all class claims arising from the Beacon episode by paying plaintiffs' counsel and the named plaintiffs some \$4 million and spending \$6.5 million to set up a foundation in which it would play a major role." *Marek v. Lane*, 134 S.Ct., at 9. Chief Justice Roberts suggested that the Supreme Court should use an appropriate certiorari petition as the occasion to address a number of questions about class action settlements involving *cy pres* awards. The questions from Chief Justice Roberts are quoted, *supra* at p. 5.

This Court's series of opinions beginning with *Six Mexican Workers* has resulted in a more critical review of proposed *cy pres* awards by district courts, *see, e.g. In re Hydroxycut Marketing and Sales Practices Litigation*, Nos. 09 MD 2087 09 CV 1088, 2013 WL 6086933 (S.D. Cal. Nov. 19, 2013); more appeals to this Court, *see e.g., Milans v. Netflix*, 13-15723 (*appeal pending*); and more criticism in the press, *see e.g., Daniel Fischer, Appeals Court Oks Facebook Settlement That Pays Lawyers And 'Bespoke' Charity*, FORBES (Feb. 27, 2013). Chief Justice Roberts' statement inviting future certiorari petitions about *cy pres* awards will predictably encourage more objections and more appeals. This presents a situation in which additional guidance from this Court will be

useful for the parties settling class actions and the district courts reviewing those settlements.

One important question not specifically addressed in this Court's sequence of class action settlement opinions is *cy pres* distributions to legal services organizations on the basis that legal services organizations have a direct and substantial nexus to the interests of settling class members in every class action. This approach has been endorsed by federal and state courts and formally adopted by a growing number of state statutes and court rules. *See infra* Section III. This appeal presents an opportunity for this Court to address this recurring issue and to provide district courts with clear guidance regarding *cy pres* awards for legal services organizations.

II. **CY PRES AWARDS ARE AN ESTABLISHED AND APPROPRIATE DEVICE IN CLASS ACTION SETTLEMENT ADMINISTRATION**

Cy pres awards in class action settlements are a positive solution to a practical problem. *Cy pres* awards are usually distributions of the residual funds from class action settlements or judgments that, for various reasons, are unclaimed or cannot be distributed to the class members. It is not uncommon for excess funds to remain after a distribution to class members. Residual funds are often a result of the inability to locate class members or class members failing or declining to file claims or cash settlement checks. Such funds are also generated when it is "economically or administratively infeasible to distribute funds to class members if, for example, the

cost of distributing individually to all class members exceeds the amount to be distributed.” *In re Baby Prods. Antitrust Litig.*, 708 F.3d at 169.

In such circumstances, three primary options are available for disposition of the remaining funds – reversion to the defendant, escheat to the state or a *cy pres* award. Courts have consistently preferred the distribution of residual funds through *cy pres* awards over the other options.¹ This Court specifically elected to approve *cy pres* awards instead of escheat or reversion in *Six Mexican Workers*, 904 F.3d at 307-309.

It is now well-established that a federal district court “does not abuse its discretion by approving a class action settlement agreement that includes a *cy pres* component directing the distribution of excess settlement funds to a third party to be used for a purpose related to the class injury.” *In re Baby Prods. Antitrust Litig.*, 708 F.3d at 172. Leading appellate decisions supporting class action *cy pres* awards include *In re Lupron Mktg. & Sales Practices Litig.*, 677 F.3d 21, 38-39 (1st Cir. 2012); *Masters v. Wilhelmina Model Agency, Inc.*, 473 F.3d 423, 436 (2d Cir. 2007); *Klier v. Elf Autochem N. Am., Inc.*, 658 F.3d 468, 475 (5th Cir. 2011); and *United States ex rel. Houck v. Folding Carton Admin. Comm.*, 881 F.2d 494, 502 (7th Cir. 1989).

¹ Courts have consistently rejected a fourth option of awarding unclaimed residual funds to already fully compensated class members. See *Klier v. Elf Autochem N. Am., Inc.*, 658 F.3d 468, 475 (5th Cir. 2011); *In re Pharm. Indus. Average Wholesale Price Litig.*, 588 F.3d 24, 34-36 (1st Cir. 2009).

The American Law Institute’s Principles of Law of Aggregate Litigation (“ALI Principles”) provide guidance on the use of *cy pres* awards in class actions. The ALI Principles explain that “many courts allow a settlement that directs funds to a third party when funds are left over after all individual claims have been satisfied . . . [and] some courts allow a settlement to require a payment only to a third party, that is, to provide no recovery at all directly to class members.” ALI Principles § 3.07 cmt. a (2010); *see also* 3 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions* § 10:17 (4th ed. 2012) (“When all or part of the common fund is not able to be fairly distributed to class members, the court may determine to distribute the unclaimed funds with a *cy pres* . . . approach.”). This Court acknowledged the guidance set forth by the ALI Principles in *Nachshin*, 663 F.3d at 1039 n.2.

III. COURTS HAVE DEVELOPED BEST PRACTICES FOR THE APPROPRIATE USE OF *CYPRES* AWARDS

In the course of approving and reviewing class action settlements, courts have developed what amount to a set of best practices for using the *cy pres* doctrine in the class action context. Amici suggest that those best practices should be applied in this appeal and, most importantly, reflected in this Court’s opinion for the future guidance of the district courts in class action settlement administration.²

² For additional discussion of these best practices, *see* Wilber H. Boies and Latonia Haney Keith, “Class Action Settlement Residue and *Cy Pres* Awards: Emerging Problems and Practical Solutions,” 21 Va. J. Soc. Pol’y & L. 269 (2014), available at http://www.vjspl.org/wp-content/uploads/2014/03/3.25.14-Cy-Pres-Awards_STE_PP.pdf.

A. Compensation of Class Members Should Come First

When funds are left over after a first round distribution to class members, the ALI Principles express a policy preference that residual funds should be distributed to the class members until they recover their full losses, unless such further distributions are not practical:

If the settlement involves individual distributions to class members and funds remain after distribution (because some class members could not be identified or chose not to participate), the settlement should presumptively provide for further distributions to participating class members unless the amounts involved are too small to make individual distributions economically viable or other specific reasons exist that would make such further distributions impossible or unfair.

ALI Principles § 3.07(b).

As the ALI Principles recognize, when further distributions to class members are not feasible, the court has discretion to order a *cy pres* distribution. *Id.* at § 3.07 cmt. a. However, many courts have articulated a reasonable requirement that a *cy pres* distribution is permissible only when it is not feasible to make distributions in the first instance or to make further distributions to class members. *Id.*; see *In re Pharm. Indus. Average Wholesale Price Litig.*, 588 F.3d 24, 35 (1st Cir. 2009); *Wilson v. Southwest Airlines, Inc.*, 880 F.2d 807, 812-13 (5th Cir. 1989).

Appellate courts have appropriately reversed district court grants of *cy pres* awards that fail to make feasible payments first to class members. This Court did exactly that in *Molski v. Gleich*, *supra* p. 8, rejecting a settlement which made no provision for payments to class members who had significant disability

accommodations claims 318 F. 3d at 954-55. In *Klier v. Elf Autochem North America, Inc.*, the Fifth Circuit took the same approach to a case with subclasses, holding that the district court abused its discretion by approving a class action settlement that included a *cy pres* distribution to charities of unused funds from one subclass instead of distributing such funds to the members of a different subclass. 658 F.3d at 479. While often cited by critics of *cy pres* distributions, the *Klier* opinion did not reject *cy pres* awards in class actions. Rather, the court clearly acknowledged that “[i]n the class-action context, a *cy pres* distribution is designed to be a way for a court to put any unclaimed settlement funds to their ‘next best compensation use, e.g., for the aggregate, indirect, prospective benefit of the class.’” *Id.* at 474; *see also Mirfasibi v. Fleet Mortg. Corp.*, 356 F.3d 781, 784 (7th Cir. 2004) (rejecting a settlement because it failed to compensate one subset of class members individually).

B. *Cy Pres* Awards Are Appropriate Where Cash Distributions to Class Members Are Not Feasible

Not every class action settlement produces a significant monetary benefit for class members. Leading cases recognize that there is also a proper place for the application of the *cy pres* doctrine in class actions in which plaintiffs allege that defendants engaged in misconduct on a wide scale which results in only *de minimis* claims of damages to individual class members. *See generally*, ALI Principles § 3.07 cmt. a. (recognizing courts’ ability to approve class action settlements that provide for cash payments to third parties with no direct cash recovery to class members). In

Nachshin, for example, AOL’s maximum liability if the class were certified and a money judgment entered was \$2 million, which meant that each of some 66 million class members would have been entitled a recovery of only three cents, making any distribution to the class members cost prohibitive. 663 F.3d at 1037. A settlement with no distribution to participants and only a change in business practice and a *cy pres* award in that situation benefitted both AOL and the class members. This Court’s approval of the settlement permitted AOL to resolve a case that would have been expensive to defend – and allowed class plaintiffs to force AOL to change allegedly improper business practices. *See also Lane*, 696 F.3d at 821 (noting objectors’ concession that direct monetary payments to the class would be *de minimis* and were therefore infeasible); *Hughes v. Kore of Indiana Enter., Inc.*, 731 F.3d 672, 676 (7th Cir. 2013) (endorsing a *cy pres* award with no payments to class members, stating “class action litigation, like litigation in general, has a deterrent as well as a compensatory objective”).

C. Cy Pres Award Recipients Should Reasonably Approximate the Interests of the Class

When further distributions to class members are not feasible, either because any remaining funds cannot be distributed cost-effectively or because of the minimal value of the claims on an individual class member basis, the question becomes how to determine which entities are appropriate recipients of a *cy pres* distribution. The ALI Principles say that recipients should be those “whose interests reasonably approximate

those being pursued by the class” and, if no such recipients exist, “a court may approve a recipient that does not reasonably approximate the interests” of the class. ALI Principles § 3.07(c); *see also In re Lupron Mktg. & Sales Practices Litig.*, 677 F.3d at 33; *Nachshin*, 663 F.3d at 1039. Federal courts should and do reject settlements which propose *cy pres* awards to organizations which seem to be chosen at random – or are nothing better than favorite charities of the counsel or parties.

D. Legal Services Organizations Are Appropriate *Cy Pres* Recipients

It is generally agreed that organizations with objectives directly related to the claims at issue in the class action are appropriate *cy pres* recipients. But a narrow limitation of *cy pres* recipients tied to the precise claims in the class action has its own problems, both theoretically and practically, and ignores the established practice of *cy pres* awards to legal services organizations that – like the class action mechanism – provide access to justice.

1. **Overly Literal Application of the *Cy Pres* Doctrine In Class Actions Is Problematic**

Narrowly limiting *cy pres* recipients to the exact claims in a class action takes too literal a view of the *cy pres* doctrine in the class action context. The use of the *cy pres* doctrine to distribute class action residue is really just a convenient analogy. The term *cy pres* derives from the Norman French phrase, *cy pres comme possible*, meaning “as near as possible,” and the *cy pres* doctrine originally was a rule of construction used to save a testamentary gift that would otherwise fail. *In re Airline Ticket Comm’n Antitrust Litig.*,

268 F.3d 619, 625 (8th Cir. 2001). But in a class action settlement, there is no underlying trust which a deceased settler has created for a specified purpose that has become unfeasible. Rather, the *cy pres* doctrine has been borrowed as a device to facilitate the administration of complex class actions. As the Seventh Circuit pointed out in *Mirfasibi v. Fleet Mortgage Corp.*, the *cy pres* device is used in class actions “for a reason unrelated to the trust doctrine” to prevent the defendant from “walking away from the litigation scot-free because of the unfeasibility of distributing the proceeds of the settlement.” 356 F.3d at 784.

In actual practice, rather than dealing with a specific bequest in a will or trust, class action litigants are resolving a complex lawsuit by a settlement in which the defendant denies liability and disposing of residual funds is typically only a small (albeit important) detail of settlement administration. And while defendants are primarily interested in concluding the case being settled, they do have a legitimate interest in how residual funds are used. For example, the settling defendant in a case about telephone services pricing may be unwilling to stipulate to a *cy pres* award to an organization that campaigns against high telephone bills. Seen in this practical light, this Court’s recent focus on finding *cy pres* recipients which work on the exact subject of the specific asserted claims may actually be a barrier to negotiating a class action settlement.

2. Federal Courts Approve *Cy Pres* Awards For Access to Justice

Approving *cy pres* awards to legal services organizations is a recognized solution to avoid the problems of awards to unsuitable recipients and awards that seem to “target” settling defendants. Federal and state courts throughout the country have long recognized organizations that provide access to justice for underserved and disadvantaged people as appropriate beneficiaries of *cy pres* distributions from class action settlements or judgments. *See Jones v. Nat’l Distillers*, 56 F. Supp. 2d 355, 359 (S.D.N.Y. 1999) (listing multiple cases where a class action *cy pres* distribution designed to improve access to legal aid was found appropriate); *see also* 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, 26-27 (providing examples of class action *cy pres* awards that improved access to justice for indigent litigants).

Such awards to legal services 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. *See, e.g. Lessard v. City of Allen Park*, 470 F. Supp. 2d 781, 783-84 (E.D. Mich. 2007) (“The Access to Justice fund is the ‘next best’ use of the remaining settlement monies in this case, because both class actions and Access to Justice programs facilitate the supply of legal services to those who cannot otherwise obtain or afford representation in legal matters.”) (internal citation omitted); *In re Folding Carton Antitrust Litig.*, MDL No. 250, 1991 U.S. Dist. LEXIS 2553, at **7-8 (N.D. Ill. Mar. 5,

1991) (approving a *cy pres* distribution to establish a program to increase access to justice “for those who might not otherwise have access to the legal system”).

This access to justice nexus falls squarely within the ALI Principles: “there should be a presumed obligation to award any remaining funds to an entity that resembles, in either composition or purpose, the class members or their interests.”

ALI Principles § 3.07 cmt. b. This is because one general interest of every class member is access to justice for persons who on their own would not realistically be able to seek court relief, either because it would be too inefficient for the court to adjudicate each injured party’s claim separately or because it would be cost prohibitive for each injured party to pursue individual claims:

[L]egal aid or [access to justice] organizations are always appropriate recipients of *cy pres* or residual fund awards in class actions because no matter what the underlying issue is in the case, every class action is always about access to justice for a group of litigants who on their own would not realistically be able to obtain the protections of the justice system.

Bob Glaves & Meredith McBurney, *Cy Pres Awards, Legal Aid and Access to Justice: Key Issues In 2013 and Beyond*, 27 Mgmt. Info. Exch. J., 24, 25 (2013); *see also* Robert E. Draba, *Motorsports Merchandise: A Cy Pres Distribution Not Quite “As Near As Possible,”* 16 Loy. Consumer L. Rev. 121, 122 (2004) (the rationale for approving *cy pres* distributions to legal services organizations, like the purpose of the class action device, is “to protect the legal rights of those who would otherwise be unrepresented”).

3. State Statutes and Court Rules Mandate *Cy Pres* Awards to Legal Services Organization for Access to Justice

In addition to the many federal and state court decisions approving the use of *cy pres* awards to advance access to justice, a growing number of states have adopted statutes or court rules codifying the principle that *cy pres* distributions to organizations promoting access to justice are *always* an appropriate use of residual funds in class action cases. In this circuit, California Code of Civil Procedure § 384 specifically authorizes payment of residual class action funds to California nonprofits that provide civil legal services to low-income individuals; Hawaii Civil Procedure Rule 23(f) gives the courts discretion to approve distribution of residual funds to Hawaii nonprofits that provide legal assistance to indigent individuals; and Washington Supreme Court Civil Rule 23(f) *requires* distribution of at least 25 percent of residual funds to the Legal Foundation of Washington to promote access to the civil justice system for low-income residents.³

³ See also 735 ILCS 5/2-807 (2008) (requiring distribution of at least 50% of residual funds to organizations that improve access to justice for low-income Illinois residents); Ind. R. Trial P. 23(F)(2) (requiring distribution of at least 25% of residual funds to the Indiana Bar Foundation); La S. C. Rule XLIII Part Q. (promoting distribution of residual funds to the Louisiana Bar Foundation); Me. R. Civ. P. 23(f)(2) (requiring that residual funds be distributed to the Maine Bar Foundation); Mass. R. Civ. P. 23(e) (permitting distribution of residual funds to Massachusetts nonprofits that provide legal services to low-income individuals); Neb. Rev. Stat. 25-319 (requiring distribution of residual funds to the Nebraska Legal Aid and Services Fund); N.M. Dist. Ct. R. C.P. 1-023(G)(2) (permitting payment of residual funds to New Mexico nonprofits that provide civil legal services to low-income individuals); N.C. Gen. Stat. § 1-267.10 (requiring equal distribution of residual funds between the Indigent Person's Attorney Fund and the North Carolina State Bar for the provision

These state statutes and court rules begin with the premise that *cy pres* distributions of residual funds are proper and valid, then specify appropriate *cy pres* recipients including or limited to entities that promote access to justice for low-income individuals and, in several state statutes and rules, mandate a minimum baseline distribution to the category of legal services organizations. Because these statutes and rules establish a presumption or requirement that residual funds will be distributed to legal services organizations, they make clear that such organizations are distinct from other charitable causes that have drawn legitimate concerns about their nexus to the interests of the class members. In other words, the state statutes and court rules (a) recognize the connection between access to justice through legal aid and through class action procedures and (b) demonstrate a clear public policy favoring *cy pres* awards to legal services organizations.⁴

of civil services for indigents); Pa. R. Civ. P. Ch. 1700 (directing distribution of at least 50% of residual funds to the Pennsylvania IOLTA Board to promote the delivery of civil legal assistance); S.D. Codified Laws § 16-2-57; (requires at least 50% of residual funds be distributed to the South Dakota Commission on Equal Access to Our Courts); Tenn. Code Ann. § 16-3-821 (authorizing the distribution of residual funds to the Tennessee Voluntary Fund for Indigent Civil Representation).

⁴ State statutes and rules enacted to “require residual funds to be distributed, at least in part, to legal aid projects” provide “evidence of a public policy favoring *cy pres* awards that service the justice system.” Doyle, *supra* p. 21, at 27. The same public policy is also evident in the many state statutes and court rules providing that income earned in attorney trust accounts will be pooled and used to fund legal services. *See e.g.*, <http://www.calbar.ca.gov/Attorneys/MemberServices/IOLTA.aspx>.

4. *Cy Pres* Awards For Legal Services Do Provide Access To Justice

Whether awarded by a federal court order or pursuant to a state statute or rule, class action *cy pres* distributions to legal services organizations are widely recognized as an appropriate and successful mechanism to further access to justice. *See, e.g.*, Daniel Blynn, *Cy Pres Distributions: Ethics & Reform*, 25 *Geo. J. Legal Ethics* 435, 438 (2012) (*cy pres* distributions to specific legal services organizations have advanced legal services); Calvin C. Fayard, Jr. & Charles S. McCowan, Jr., *The Cy Pres Doctrine: “A Settling Concept,”* 58 *La. B.J.* 248, 251 (2011) (*cy pres* awards made to Louisiana legal services organizations will promote access to the courts); Danny Van Horn & Daniel Clayton, *It Adds Up: Class Action Residual Funds Support Pro Bono Efforts*, 45 *Tenn. B.J.* 12, 13-14 (2009) (*cy pres* awards to legal services organizations benefit class members in a similar way to Fed. R. Civ. P. 23 – providing access to justice). Legal services organizations in this Circuit and across the country protect and preserve the basic necessities of life – food, shelter, health care, safety and education for millions of Americans for whom legal services organizations are not just one means of access to justice; they are the *only* means.

E. *Cy Pres* Distributions Should Recognize Both the Forum and the Geographic Make-Up of the Class

In multi-state or national class actions, both the geographic composition of the class and connections of the case to the forum are significant factors for the court in addressing class certification issues and later *cy pres* distributions.

It is important to recognize that even a national class action is certified, administered and settled in one particular jurisdiction for a reason. Cases are filed and resolved in particular courthouses because of factors such as a concentration of persons claiming an injury or the headquarters of the defendant. Major class actions are often administered in a forum selected by the Judicial Panel on Multidistrict Litigation, which carefully weighs the connections of different jurisdictions to national class actions.

In this context, courts do approve *cy pres* awards to local entities in the settlement of national class actions. A reasonable approach to this issue is to provide that some *cy pres* distribution in a multi-state or national class action be awarded to organizations in the local jurisdiction as well as to national organizations. Many counsel and courts have followed this approach. A recent example is *In re Motorola Securities Litigation*, a MDL case with significant *cy pres* awards to both local legal services organizations and national charities. No. 03 C 287, slip op. at 2 (N.D. Ill., March 5, 2013) (copy included with brief pursuant to FRAP 32.1); *see also Jones v. National Distillers*, 56 F. Supp.2d 355, 359 (S.D.N.Y. 1999) (citing *Superior Beverage Co. v. Owens-Illinois, Inc.* 827 F. Supp. 477, 478-479 (N.D. Ill. 1993)); *In re Motorsports Merchandise Antitrust Litigation*, 160 F. Supp. 2d 1392, 1394 (N.D. Ga. 2001).

Cy pres awards to appropriate local organizations are strongly supported by the state statutes and court rules requiring that a pre-set percentage (up to 50%) of any residual funds go to organizations that promote access to justice for low-income local

residents. *See supra* Section III, D.3. One result of those statutes and rules is that many national class actions in urban jurisdictions, such as the Los Angeles County Superior Court and the Circuit Court of Cook County (Chicago), are administered in a regime in which a significant percentage of *cy pres* awards in national class actions goes to local legal services agencies where the case is litigated and settled.

Finally, it would be an unnecessary burden on busy district court judges if they were required to wrap up class action settlements by applying complex tests for how to allocate residual funds across the country in every “national” class action. This is a subject best left to the discretion of district judges familiar with the circumstances of the class action being settled.

F. Procedures Are in Place to Address Conflicts of Interest and the Appearance of Impropriety

Courts reviewing *cy pres* awards should of course look carefully at whether there is any substance to attacks on the impropriety of particular *cy pres* awards. This Court’s recent *cy pres* opinions have dealt with those appropriate concerns by narrowly tying the *cy pres* award to the claims being settled. However, there are rules and procedures in place to deal with suggestions of impropriety that do not require the nexus of *cy pres* recipients to be so narrowly tailored.

Courts have recognized, for example, that a potential conflict of interest exists between class counsel and their clients because *cy pres* distributions may increase a settlement fund as a basis for plaintiffs’ attorneys’ fees, without increasing the direct

benefit to the class. *In re Baby Prods. Antitrust Litig.*, 708 F.3d at 173. A straightforward solution exists to address this issue: if the presiding judge is concerned that class counsel may lack incentive to vigorously pursue individualized compensation for absent class members, the court can and should “subject the settlement [and the distribution process] to increased scrutiny.” *Id.*

There is also a legitimate concern that the prospect of *cy pres* distributions can improperly motivate lawsuit parties and their counsel to steer unclaimed awards to recipients that advance their own agendas. *See In re Lupron Mktg. & Sales Practices Litig.*, 677 F.3d at 38; *Nachshin*, 663 F.3d at 1039. To deal with this concern, courts should evaluate whether any of the parties or counsel involved in the litigation has any significant affiliation with or would personally benefit from the distribution to the proposed *cy pres* recipients. Such an analysis is not unduly burdensome for the court to undertake and should address this concern about abuse.

Finally, critics of *cy pres* awards also worry about judicial involvement in making *cy pres* awards. In legal ethics terms, “the specter of judges and outside entities dealing in the distribution and solicitation of settlement money may create the appearance of impropriety.” *Nachshin*, 663 F.3d at 1039. This concern is also easily addressed. To avoid criticism of judges, it is preferable that the parties or counsel (rather than the court) propose the charities to receive any *cy pres* distribution and that the settlement agreement proposes specific *cy pres* awards (rather than leave the issue for resolution by a district judge at some point after the settlement is approved).

As to ground rules for the role of the district judge, as noted in the ALI Principles, “[a] *cy pres* remedy should not be ordered if the court . . . has *significant* prior affiliation with the intended recipients that would raise substantial questions about whether the selection of the recipient was made on the merits.” ALI Principles, § 3.07 cmt. b (emphasis added). Only if necessary, the statutes governing judicial recusal can be applied. For example, in *Nachshin*, one objector attacked the district judge who approved the parties’ settlement agreement because her husband was a board member of one of the proposed *cy pres* recipients. This Court firmly rejected this attack, applying the test for recusal under 28 U.S.C. § 455(a) (“whether a reasonable person with knowledge of all the facts would conclude that the judge’s impartiality might reasonably be questioned”) and finding that, “there is no reason to believe [the judge’s husband] (as one of 50 volunteer board members) would himself realize a significant benefit” from the proposed award.” *Nachshin*, 663 F.3d at 1041-42

In short, there are good reasons for careful court review of proposed *cy pres* awards – and there are reliable procedures in place for conducting that review without overly restricting the organizations that can receive *cy pres* awards.

CONCLUSION

While appellate courts should carefully scrutinize *cy pres* awards, it is equally important for this Court to give the district courts sound general guidance for considering *cy pres* awards as part of the fairness hearing in a Rule 23 class action settlement. That guidance should include the widely recognized criteria discussed in this amicus brief: (1) compensation of class members should come first; (2) *cy pres* awards are appropriate where cash distributions to class members are not feasible; (3) *cy pres* awards should reasonably reflect the interests of the class; (4) legal services organizations should always be considered as appropriate *cy pres* recipients; (5) *cy pres* distributions should recognize both the geographic scope of the class and connections of the case to the forum; and (6) conflicts of interest and the appearance of impropriety can be avoided by applying recognized rules.

Amici urge this Court to endorse these simple rules to minimize controversies about an effective and important mechanism for class action administration. We particularly urge this Court to expressly recognize that legal services organizations are appropriate recipients of *cy pres* awards in class actions.

Dated: June 6, 2014

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This petition complies with the type-volume limitations of Fed. R. App. P. 32(a)(7)(B) because the petition contains 6,438 words, excluding the parts of the petition exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

The petition complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because the petition has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Garamond typeface.

The petition complies with 9th Cir. R. 25-5(e), as it is a PDF generated from the original word processing file.

Dated: June 6, 2014

By: _____s/Wilber H. Boies_____

Wilber H. Boies

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on June 6, 2014.

Participants in the case who are registered CMECF users will be served by the appellate CM/ECF system.

By: _____ s/Wilber H. Boies

Wilber H. Boies

DM_US 51963370-7.099843.0014

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

<p>In Re:</p> <p>MOTOROLA SECURITIES LITIGATION</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>No. 03 C 287</p> <p>Judge Rebecca R. Pallmeyer</p>
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ORDER

Several years ago, this court approved the terms of an agreement to settle a securities fraud action brought on behalf of a class of investors in Motorola common stock. Following *pro rata* distributions to tens of thousands of class members, there remains \$334,060.60 in the settlement fund. The parties agree this amount is insufficient to justify a third *pro rata* distribution and seek the court’s approval of *cy pres* distribution to a charitable cause.

As this court has previously observed, the Seventh Circuit has not articulated explicit criteria for a district court’s *cy pres* distribution of residual settlement funds, and has recognized that the court has broad discretion in identifying appropriate uses of such funds. *Houck on Behalf of U.S. v. Folding Carton Admin. Comm.*, 881 F.2d 494, 502 (7th Cir. 1989). Other courts have suggested that *cy pres* distributions be aimed at recipients “whose interests reasonably approximate those being pursued by the class.” *In re Lupron Marketing and Sales Practices Litig.*, 677 F.3d 21, 32 (1st Cir. 2012) (quoting Am. Law Inst., PRINCIPLES OF THE LAW OF AGGREGATE LITIGATION §3.07(c) (2009)); *see also Klier v. Elf Atochem North America, Inc.*, 658 F.3d 468, 474 (5th Cir. 2011) (“a *cy pres* distribution is designated to . . . put any unclaimed settlement funds to their next best compensation use, e.g., for the aggregate, indirect, prospective benefit of the class”) (internal quotation marks and citation omitted).

The court received several requests from organizations seeking *cy pres* distribution funds. Following the guidance offered by the American Law Institute, the court directed counsel to identify charitable organizations whose objectives “reasonably approximate” those of the Plaintiff Class. Counsel’s efforts to provide such information were helpful in identifying organizations that promote and protect interests relevant to the matters at issue here. The court also acknowledges and agrees that charitable efforts that are “closer to home” (located in Illinois, where the case was litigated and where Motorola is located) are also worthy of consideration. Without endorsing the notion that mobile phone use has any relationship to brain tumors, the court also acknowledges and accedes to the request of counsel that a portion of the *cy pres* funds be directed to brain research and support for the victims of such tumors.

In sum, having reviewed attorney submissions, the court hereby awards sums as follows (descriptions of each recipient were provided by counsel or are available on line):

Recipient	Description	Sum awarded
Americans for Financial Reform	A project of the Leadership Conference Education Fund, the AFR is committed to sustaining an accountable, fair, and secure financial system.	\$ 50,000
National Conference on Public Employee Retirement Systems	The NCPERS is the largest trade association for public sector pension funds in the United States and Canada; it works to promote and protect pensions for public sector stakeholders.	\$ 50,000
Chicago Lawyers Committee for Civil Rights Under the Law	The Lawyers Committee is a non-profit organization that brings class actions on behalf of the poor, mostly in Cook County, Illinois.	\$ 50,000
Legal Assistance Foundation	LAF is a non-profit provider of general legal services to the poor in Cook County.	\$ 50,000

Chicago Bar Foundation	The Foundation is the charitable arm of the Chicago Bar Association; it makes grants to access-to-justice initiatives.	\$100,000
American Brain Tumor Association	(ABTA) is a non-profit organization dedicated to providing support services and programs to brain tumor patients and their families, as well as the funding of brain tumor research. Although headquartered in Chicago, Illinois, the research efforts of the organization have a national impact.	\$15,000
Motorola Mobility Foundation	The MMF makes investments in communities around the world, "focused on bringing [Motorola] talent, technology and financial resources into 18 countries, supporting programs and projects that promote education, community improvements and health and wellness."	Any funds remaining after the above distributions

Plaintiff's motion to approve final accounting and make final disbursement [586] is granted. Petitioners Legal Assistance Foundation and Chicago Bar Foundation's motions for distribution [590, 597] are also granted. The court thanks counsel for their patience and courtesy in awaiting the court's ruling on this distribution.

ENTER:



REBECCA R. PALLMEYER
United States District Judge

Dated: March 5, 2013