March 17, 2015


Prof. Richard Marcus
Associate Reporter to the Advisory Committee on Civil Rules
UC Hastings College of Law
200 McAllister, San Francisco, CA 94102


Re:     *Mandatory Disclosure Provision for Fed. R. Civ. P. 23*


Dear Prof. Marcus:

Complaints about class actions are driven by a perception that class members are not obtaining adequate relief in class cases. Yet we lack good data on the quality of results in class-action settlements. *See* William B. Rubenstein & Nicholas M. Pace, *Shedding Light on Outcomes in Class Actions*, in CONFIDENTIALITY, TRANSPARENCY, AND THE U.S. CIVIL JUSTICE SYSTEM 20 (Joseph W. Doherty, Robert T. Reville & Laura Zakaras eds., Oxford University Press, 2012).

We propose a revision to the class action rule requiring parties to file information describing the distribution of money to class members, other beneficiaries, and counsel. More light on settlement outcomes will reveal which types of settlements work and which do not. Judges will learn which practices – with regard to notice, type of relief, claim procedures, and the like – benefit class members and which do not. Anecdotes about greedy plaintiffs' lawyers and corporate wrongdoers buying res judicata on the cheap do not make good policy. What does? Arming rule makers and researchers at the FJC, in academia, and in private think-tanks with information necessary to drive informed research and policy judgments. This proposal is similar to that found in the ALI Principles of the Law of Aggregate Litigation § 3.13 (e) (where monetary relief is awarded, courts "should, absent special circumstances, require the parties to submit to the court a final accounting describing the amount and distribution of all benefits to class members, other beneficiaries, and counsel.")

It is crucial for society, the judiciary, and the integrity of the legal profession that this information be revealed. For this reason, we urge the committee to consider the adoption of the attached proposed amendment. Thank you in advance for your attention to this proposal.

Sincerely,
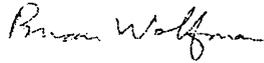
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# Proposed Class Action Disbursement Disclosure Rule

## New Rule 23(*i*)

**(*i*) Filing of Settlement and Judgment Information**

**(1)** In any action certified under Rule 23 in which damages, restitution, disgorgement, back-pay, or other monetary relief is sought or awarded, the court must, as a condition of approving any settlement, voluntary dismissal, or compromise under Rule 23(e), and in entering any judgment in the action, order the parties to file information describing the amount and distribution of benefits (including non-cash benefits) distributed to class members, other beneficiaries, and counsel. This filing must be available to the public and, at a minimum, must include

**(A)** the total value of any monetary judgment or settlement available for distribution to the class members;

**(B)** the number of class members (or, if the exact number is not available, the best estimate thereof), the number of class members who sought monetary relief, the number of class members who received monetary relief, and, except as provided in Rule 23(*i*)(3), the amount each class member received;

**(C)** where class members are entitled to non-monetary relief, such as discount coupons or debit cards or similar instruments, the number of class

members availing themselves of such relief and the aggregate value redeemed

by the class members and/or by any assignees or transferees of the class

members' interests;

**(D)** the amount and timing of monetary and non-monetary benefits

disbursed to each of the representative parties;

**(E)** the amount distributed, under cy pres or other similar principles, to

each beneficiary other than class members, including non-profit

organizations, and the identity of each such beneficiary; and

**(F)** the amount of attorney's fees, costs, and expenses disbursed to each

counsel or law firm representing class members, the date of each such

disbursement, and an explanation of the relationship, if any, between the

amount of the award and the amount of relief available or disbursed to the

class members.

**(2)** In meeting the requirements of Rule 23(*i*)(1)(B), the court may

issue any order necessary to protect the identities of individual class

members to the extent that the disclosure of their identities would constitute

a clearly unwarranted invasion of their personal privacy.

**(3)** In meeting the requirements of Rule 23(*i*)(1)(B), if, and only to the

extent that, the court finds that it is impractical to require the filing of the

amount disbursed to each class member, the court must require the parties to

file information so that the range of distribution of benefits, and the number of beneficiaries at various levels of distribution, is fully disclosed.

**(4)** The information required to be filed with the court under Rule 23(*i*)(1) must be filed as soon as practicable after the information is available, but in no case more than 2 years after the settlement or judgment in the action is final and no longer appealable. If, after such 2-year period has expired, the information required to be filed under Rule 23(*i*)(1) is not available in full, the court must require that all available information be filed at that time and that a full report containing all of the required information be filed as soon as it is available.

[3/17/2015]