
CABLE TV LATE FEE LITIGATION:¹
***SELNICK v. SACRAMENTO CABLE*²**

PROLOGUE

Sacramento Cable Television is the sole cable television operator for Sacramento, California, a metropolitan area of about 1.5 million residents. It services the cities of Sacramento, Folsom, and Galt as well as the County of Sacramento. Through 1996, Sacramento Cable Television operated as a partnership of Scripps-Howard Cable Company of Sacramento, which was owned by the large Scripps-Howard Broadcasting Corporation, and River City Cablevision, Inc.³ Although the subscriber base has varied as households add and drop cable services, the company serviced, on average, approximately 209,000 subscribers per month between 1992 and 1994 for charges ranging from \$10 to \$23.⁴

On March 23, 1993, Sacramento Cable instituted a policy of charging a \$5.00 late fee for tardy payments of monthly subscriber bills.⁵ The company's practice was to mail bills on the first day of the service period and impose a payment due date 20 days later. If Sacramento Cable did not receive payment within four days of the due date, the company charged the subscriber the \$5.00 late fee.⁶ After imposing late fees, Sacramento Cable engaged in a series of efforts ranging from notices to disconnecting the cable to obtain payment of the subscriber's account balance. Table 8.1 describes the steps by which Sacramento Cable sought payment. The company's statistics indicate that, on average, from 1992 through 1994 approximately 35,000⁷ customers were charged late fees each month, amounting to about \$175,000 per month paid to the company.

Sacramento Cable's customers responded to the new late fee policy with numerous complaints to the local cable regulatory commission, the Sacramento Metropolitan Cable Television Commission. In fact, late fees were the number-one complaint received by the commission.⁸ Based on these complaints, in 1994 the commission opened an investigation into Sacramento Cable's pricing policies with particular focus on its late fees. In May 1994, the company commissioned a study by Price Waterhouse, which it expected to support its poli-

Table 8.1
Sacramento Cable's Process for Settling Accounts*

Action	Days Elapsed	Number of Subscribers Involved
Invoice mailed	0	209,000
Due date	20	209,000
Late fee	24	35,000
Delinquent notice	37–40	21,000
Soft disconnect	45	7,700
Phone contact	50–55	4,200
Hard disconnect	65	1,800
Second delinquent notice	75	1,350
Final delinquency notice	85	1,250

*Opposition to Certification at 4–7.

cies—policies, it maintained, that were necessary to cover the cost of all actions taken to satisfy its accounts.⁹

CLASS LITIGATION BEGINS

As the commission investigated the late fees, an outside attorney who was assisting the commission asked an acquaintance, Mark Anderson, about cable late fee cases and informed him of the ongoing investigation into Sacramento Cable. Anderson, a San Francisco attorney active in the consumer class action arena, had previously brought consumer class actions alleging improper late fees.¹⁰

Anderson made his own inquiries and obtained copies of the various documents filed with the commission. Upon reviewing this information, he concluded that Sacramento Cable's late-fee charges were probably illegal under California law because the company's policy did not seem to be based on a reasonable estimate of the damages incurred by overdue bills. At the time, under California law, a late fee on a consumer bill could be charged only when the damages that would be incurred by late payment would be difficult to ascertain, and the charge imposed as a late fee was reasonably related to the damages actually incurred.

Consequently, Anderson initiated litigation against Sacramento Cable. Through his contact in Sacramento, he identified Donna Selnick, a professor of consumer rights at California State University—Sacramento, to be the representative plaintiff in this action.¹¹

PRIMARY ISSUES OF THE LITIGATION

On July 25, 1994, Anderson filed his complaint in state court in Sacramento, naming Selnick as the representative plaintiff and Sacramento Cable Television, Scripps Howard Cable Company of Sacramento, and River City Cablevision as the defendants.¹² For purposes of pretrial motions, the suit was assigned to Judge John R. Lewis, a 16-year veteran of the bench.

Using the defendant's statistics for monthly late charges, Anderson estimated a potential class recovery of \$4.6 million¹³ by calculating \$5.00 per late fee times 33,000 late-fee charges per month over 28 months from March 1992 through July 1994. This amount reflects the recovery total if all individuals who were charged late fees received a refund of all charges. In addition, the plaintiffs sought injunctive relief enjoining the defendants from imposing an unlawful late-fee charge.

The complaint pled two causes of action based on the business practices described above. The plaintiffs alleged that the late fee was in violation of California Civil Code Section 1671, and that the defendants engaged in unlawful and unfair business practices as defined by California Business & Professions Code Section 17200.¹⁴ The complaint and much of the activity in the case focused on the legal standards underlying these causes of action because the relevant facts were largely undisputed.¹⁵

The central cause of action was the violation of Section 1671.¹⁶ This statute generally describes the circumstances under which liquidated damages clauses in contracts—provisions that provide the amount of damages for breach of contract—are enforceable. In contract law, late payment of a bill constitutes a breach of contract, and late-fee provisions are a type of liquidated damages clause. However, in consumer contracts, liquidated damages clauses are valid only “when, from the nature of the case, it would be impracticable or extremely difficult to fix the actual damages.”¹⁷

In a series of cases, California state courts have identified those costs that are a reasonable basis for fixing late-fee amounts. Cases interpreting the statute have held that a liquidated damages clause will be struck down if the charge “is designed to exceed substantially the damages suffered” as a result of the breach of contract.¹⁸ Under such circumstances, the clause becomes a penalty instead of an attempt to fix damages reasonably. If a party to the contract has made a “reasonable endeavor” to ascertain the actual damages resulting from a breach of the contract, the damage clause is more likely to be viewed as enforceable.¹⁹ In this lawsuit, the parties agreed that it was difficult for Sacramento Cable to determine the amount of damages that it incurred as a result of delinquent sub-

subscriber payments; therefore, the defendants were permitted to impose a late fee.²⁰ However, the parties disagreed about whether Sacramento Cable had made a reasonable effort to ascertain actual damages as a basis for setting the late-fee amount.

The defendants—represented by the Los Angeles offices of the national law firm Baker & Hostetler—argued that they did make a reasonable endeavor to fix the costs of delayed subscriber payments.²¹ The defendants claimed that they had performed an analysis of Sacramento Cable’s costs before the late fees went into effect.²² In addition, they pointed to the Price Waterhouse report, which indicated that Sacramento Cable incurred a cost of \$5.28 for each delinquent account.²³

Throughout the litigation, the plaintiffs argued that the \$5.00 late fee amount bore no relationship to the actual damages incurred by Sacramento Cable as a result of a late payment. Anderson argued that Sacramento Cable employees had simply called other cable companies and learned that they were charging \$5.00 late fees. Such a survey of other companies’ policies would not establish the actual costs incurred by Sacramento Cable and could not be used legally to set the late-fee amount. Furthermore, if the case went to trial, the plaintiffs were prepared to present a witness who would testify that the defendants received \$6.5 million in revenue from the late fees during the period they were imposed, and incurred only \$1.5 million in costs as a result of late payments. This witness was also prepared to say that the purpose of imposing the late fee was to raise revenue.²⁴

The proportion of recovery the plaintiffs would receive if liability were found against the cable company constituted another legal issue. When a charge is declared invalid as a penalty, the customer “remains liable for the actual damages resulting from his default.”²⁵ From the plaintiff’s perspective, if only \$1.5 million of \$6.5 million of late-fee revenue was required to cover Sacramento Cable’s actual costs, then the class should receive \$5 million in compensation.

As the litigation got under way, Sacramento Cable changed its procedures in response to the commission investigation. On October 22, 1994, it began charging late fees 37 days after the invoice date—or 17 days after the due date—and giving customers almost two more weeks’ grace period.²⁶ This policy change, occurring three months after the complaint in the class action litigation was filed, may have resulted from the commission investigation, the class action complaint, or both. After the policy change, the company collected, on average, 22,000 late-fee charges per month, down from 33,000.²⁷

LITIGATION OF THE CASE

On March 13, 1995, about eight months after filing the complaint, Anderson filed a motion for class certification. He argued that this case met all of the requirements under California Code of Civil Procedure Section 382. The principal issue of whether Sacramento Cable's business practices were unlawful comprised questions of law and fact common to the entire class.²⁸ The only issue individual to each putative class member was the number of late fees charged to each individual, an issue relevant to damages but not to liability. The plaintiffs argued that, under these circumstances, class certification was appropriate.

The defendants vigorously opposed the plaintiffs' motion and argued that: (1) the proposed class was vague and ill-defined, (2) individual issues predominated over any common issues of the putative class, and (3) alternatives to class action were superior for achieving justice in this case.²⁹ The defendants asserted that the class was ill-defined because not everyone who paid a late fee was actually financially injured by the charge. Only if the charge violated Section 1671 as interpreted by case law would the subscriber have a cause of action against the defendants. Because violations of Section 1671 had to be determined on a case-by-case basis, the defendants contended, the class was not well-defined and should not be certified. Second, and similarly, the defendants argued that individual issues of injury predominated over any common issues among members of the proposed class because the damage sustained by each injured plaintiff varied. As a result, they claimed any litigation should proceed as individual actions and not as a class action.

The motion was argued on April 12, 1995. Judge Lewis granted the plaintiffs' motion, and in an order dated April 25, 1995, certified the class. The class was defined as:

All current and former subscribers who paid late fees to defendant Sacramento Cable Television, a California partnership, in the period March 1, 1992, to the present (for purposes of damages) and all current Sacramento Cable Television subscribers for the purpose of injunctive relief.³⁰

In his certification order, Lewis held that common issues predominated over individual ones. He noted that the commission had chosen to defer to a class action as the appropriate mechanism for seeking redress. He indicated that the plaintiff would be an adequate class representative, and if it appeared that there existed subclasses for whom she would not provide adequate representation, then additional representatives could be established.³¹

After the judge granted the class-certification motion, the parties agreed to a program providing notice of the pending class action to the class members.³²

Under the approved program, notice of class certification was required to be published in the *Sacramento Bee* one day before July 15, 1995, and televised in the Sacramento Cable service area once every four hours for five consecutive days on the company's own Preview Channel before July 20, 1995. Operated by Sacramento Cable, the Preview Channel provides subscribers with information about upcoming programming. All costs of this notice program were borne by the defendants. Interestingly, no direct notice of the pending class action was supplied to the group easiest to identify and contact—current Sacramento Cable Television subscribers.

The notice described the litigation and the potential class and informed potential class members of their rights. Potential members had three options:

- do nothing, in which case they would be automatically included in the class
- enter an appearance through their own counsel, or
- file a written request to be excluded from the class (opt out).

If a class member wished to opt out, he or she had to submit a request by July 30, 1995, or two weeks after notice was published and ten days after the Preview Channel broadcast.³³

From June 1995 to May 1996, litigation in the case continued. Both sides propped and responded to discovery requests, took and defended depositions, and prepared the case to go to trial. The trial date was initially set for May 6, 1996.

NEGOTIATING THE SETTLEMENT

According to our interviews, settlement negotiations did not begin until the mandatory settlement conference, which occurred approximately 30 days before the initial trial date. The defendants' initial settlement offers included an injunction preventing Sacramento Cable from illegally imposing a late fee and providing for attorney fees for class counsel, but no direct compensation for the class. But without at least some compensation for late fees paid by class members, Anderson would not settle. The offer of injunctive relief provided little satisfaction at this point because Sacramento Cable had already changed its policy by delaying late fees.³⁴ The trial, however, was postponed on May 6 because the parties were nearing an agreement.

The parties reached a settlement on May 31, 1996.³⁵ It provided for (1) a fund to reimburse class members for a portion of late fees paid, (2) payment of attorney fees and costs out of the settlement fund, and (3) a requirement that any

moneys remaining in the settlement fund after payment of all class claims, fees, and other expenses would be distributed at the court's discretion.³⁶ The latter provision was required by California law, which specifies that the court must be informed of any moneys remaining after the distribution of a class settlement fund and that the residual (plus interest) thereafter be paid as the court directs, rather than reverting to the defendants. The payment must be made "in a manner either designed to further the purposes of the underlying causes of action, or to promote justice for all Californians."³⁷ The parties can recommend recipients of the unspent fund, but the final decision rests with the judge. The amount of attorney fees and costs were to be approved by the court at the final fairness hearing.

The Stipulation of Settlement did not address the original request for an injunction to enjoin the defendants from imposing a late fee in the future, perhaps because legislation allowing late fee charges of up to \$4.75 for cable services had been introduced into the California Senate on February 22, 1995.³⁸ Sponsored by the California Cable Television Association in direct response to class action cases against late-fee charges, the bill passed both houses on August 30, 1996. Governor Pete Wilson signed it into law in late September. Under the new law, companies could charge higher fees if they could justify them as long as they did not violate Section 1671.

The class defined under the settlement included "all persons who paid late fees to Sacramento Cable between March 1992 and May 6, 1996,"³⁹ the trial date. In late April 1996, Anderson had filed an amended complaint extending the class definition in preparation for trial to include persons who paid late fees up to the scheduled trial date. This expanded class definition now bound individuals who had not had an opportunity to opt out of the class, i.e., persons who were not Sacramento Cable subscribers in July 1995—and so did not know of the pending class action settlement, but paid late fees to Sacramento Cable between August 1995 and May 6, 1996. Presumably, the company accepted class expansion to end its exposure to liability; however, because the defendants did not provide us information for this study, we may only speculate about the causes of their actions. Because of this change, it remains unclear how many subscribers were included in the class.

Settlement Fund

The settlement provided for the creation of a fund of \$1.5 million⁴⁰ to compensate the plaintiffs as well as provide for attorney fees and the costs of the administration of the class. The only expenses that would not come out of this fund were the costs of notice, which were to be paid separately by the defendants.⁴¹

Individual Claim Amounts

The agreement provided that the claimants would receive refunds for up to ten late fees, or \$50.00.⁴² The plaintiffs' attorney proposed the ten-claim limit, which was modeled after the settlement of a recent late-fee case reached by the District Attorney for Santa Clara County.⁴³ To receive the funds, a claimant had to submit a claim form to the claims administrator. Claimants did not need to prove payment of late fees, only submit a claim signed under oath. The defendants claimed that they did not have records for individuals who had paid late fees in the past and whose accounts had been closed, so they could not provide automatic refunds. Instead, class members were required to mail their forms to the claims administrator by August 30, 1996. (The deadline was extended to December 31, 1996, at the time of the final fairness hearing.)

Notice and Preliminary Settlement Approval

On June 26, 1996, the court granted the plaintiffs' motion for preliminary approval of the settlement and ordered notice to the class.⁴⁴ The notice plan required a two-part process. First, defendants were asked to mail the notice and a claim form to all current Sacramento Cable Television subscribers in their monthly bills by August 16, 1996.⁴⁵ Second, defendants were required to publish the notice and a copy of the claim form in the Metro section of the *Sacramento Bee* one day a week throughout July 1996.

The text of the notice statement advised class members of the settlement, apprised them of their rights under the settlement and the law, and gave them instructions on how to claim payment as part of the class.⁴⁶ In addition, the notice described the litigation and the terms of the settlement. Class members were advised of their options, which included (1) taking part in the settlement, (2) not taking part in the settlement, which, as a practical matter, would mean that the class member would be unlikely to recover any funds from the defendants, and (3) appearing in the lawsuit and objecting to the settlement. Class members who had not previously opted out of the class did not have the opportunity to opt out at this stage but could appear with counsel at the final settlement hearing in Sacramento on September 19, 1996. The notice did not place time limits on making objections, so presumably class members could appear at the fairness hearing to voice concerns without first informing counsel or the court.

Final Settlement Approval

During the period between the preliminary settlement approval and the final fairness hearing, the plaintiffs' attorney received only a few complaints regard-

ing the terms of the settlement.⁴⁷ All of these complaints centered on the fact that each class member was limited to claiming compensation for no more than ten late fees. Of the complaints received by the plaintiffs' attorney, only one class member voiced his intention to file written objections to the settlement and appear at the fairness hearing.⁴⁸ According to class counsel, fewer than five class members elected to opt out of the settlement.

Before the final fairness hearing, Anderson filed a motion in support of the final settlement and for fees and other awards. In this document, he asked the court to approve \$457,000 in fees and an additional \$58,101 in costs associated with the litigation.⁴⁹ The fee requested represented 30 percent of the settlement fund, including projected interest to November 1996 (\$1,523,000). In support of this request, Anderson totaled the hours devoted by him and his associates to prosecuting the action up to that point and estimated the time that would be required to complete the case—547.5 hours. The costs included filing fees, service charges, expert witness fees, court reporter fees, travel expenses, and mailing and copying costs. Anderson also asked the court to approve a payment of \$2500 to Donna Selnick, the representative plaintiff.⁵⁰ The plaintiffs' counsel indicated that he had settled a competing class action⁵¹ that also alleged the illegal collection of late fees by Sacramento Cable and that the \$9126 paid to resolve the case would come out of any attorney fees awarded in the instant action. Additional moneys would be deducted from the settlement fund for the administration of the settlement, including payment of the class administrator and payment of taxes due on income earned by the interest-bearing account into which the settlement amount had been deposited.

The fairness hearing was held on September 19, 1996. No appearances or objections were made to the settlement, the attorney award request, or the representative-plaintiff award request. The judge approved the settlement as well as attorney and representative-plaintiff awards, and entered judgment on the same day.⁵² In addition to retaining jurisdiction over the implementation of the settlement, the court approved provisions in the settlement agreement that require the class counsel to make a report to the court regarding any moneys remaining in the settlement fund after the distribution of benefits to the class and the payment of settlement-related expenses.

Distributing Settlement Awards

Some claims were already in the class administrator's hands, so administration of the settlement could begin as soon as the judgment was final 60 days after the September 19 hearing.⁵³ By January 1997, the total settlement fund was \$1.5 million plus \$29,870 in accrued interest.⁵⁴ On or about January 8, the claims administrator mailed out all claimant payments—7629 claims for a total

of \$271,450.⁵⁵ Next, \$520,101 in plaintiffs' attorneys' fees and costs were paid, as was \$2500 in an incentive fee to the representative plaintiff.⁵⁶ Fund administration costs, including tax payments and future costs, came to \$66,353.⁵⁷

Once these payments were made, \$669,466—about 44 percent of the total settlement fund plus interest—remained in the class fund for allocation to charities in a *cy pres*, or “next best,” distribution, in accordance with the court's discretion according to California law.⁵⁸ In February 1997, Anderson recommended distribution of the residual to a variety of groups that he felt would use the money for protecting consumers (see Table 8.2).⁵⁹

Anderson thought the *cy pres* award should go to consumer advocacy groups because the class action had been originally based on California Civil Code §1671—essentially a consumer protection statute. Because at least one of the class counsel's proposed recipients was a party to other matters pending in Judge Lewis's court, he disqualified himself from ruling on the distribution of the residual funds.

Judge Joe S. Grey made the final decision in his stead in November 1998. At that time, Judge Grey ordered that the money be donated to the University of the

Table 8.2
Proposed Cy Pres Distribution

Recipient	Award	Purpose
California State University, Sacramento	\$250,000	To endow a fund for teaching and research in consumer education
Legal Services of Northern California	\$200,000	For projects addressing “welfare to work” issues and foreclosure prevention for older adults
Western Center on Law & Poverty	\$64,000	For a fund to advocate welfare reform in the state capital
The National Association of Consumer Advocates, Inc.	\$87,000	For support of this nonprofit association of attorneys in representing consumers on matters regarding abusive or unlawful business practices
Mutual Assistance Network of Del Paso Heights	\$25,000	To provide information to low-income community members on food budgeting and nutrition
KVIE-TV	\$25,000	To produce a television program about consumer protection
Legal Community Against Violence	\$12,000	To expand its program promoting ordinances designed to increase controls on firearm sales and related issues
National Consumer Law Center	\$5,000	To support this nonprofit consumer resource center for attorneys and other consumer-protection advocates

Pacific's McGeorge School of Law for the establishment of the Center for Access to the Courts Through Technology. The center would be under the direction of law professor J. Clark Kelso, and its stated purpose would be to facilitate "access to public dispute resolution systems using modern communication and information technologies" with particular awareness of "the special needs of pro per litigants and under-represented persons and consumers."⁶⁰

Key Events	Date
\$5.00 late fees policy begun	March 23, 1993
Complaint filed	July 25, 1994
Bill allowing \$4.75 late fees introduced in California Senate	February 22, 1995
Motion for class certification filed	March 13, 1995
Motion for certification argued	April 12, 1995
Class certified	April 25, 1995
Print notice deadline	July 15, 1995
Broadcast notice deadline	July 20, 1995
Opt-out deadline	July 30, 1995
Initial trial date (postponed)	May 6, 1996
Settlement reached	May 31, 1996
Preliminary approval of settlement and order to notify class	June 26, 1996
Final fairness hearing	September 19, 1996
Bill allowing \$4.75 late fees signed into law	late September 1996
Deadline for submission of claim forms	December 31, 1996
Payments mailed to claiming class members	early January 1997
Approval of cy pres award to charities	November 1998

NOTES

¹As part of our research on this litigation, we interviewed the primary plaintiffs' attorney. We contacted the defendants' attorneys, and through them the defendants, but were not able to interview representatives from either. We contacted the judges involved in this case but they declined to be interviewed because of concerns over pending motions in the matter. We also reviewed the pleadings and papers filed in the case as well as other documents including newspaper and magazine articles, law review articles, and press releases.

²*Selnick v. Sacramento Cable*, No. 541907 (Cal. Super. Ct. 1996).

³Complaint for Damages, Restitution, and Injunctive Relief for Violation of the Liquidated Damages Statute and Unfair Trade Practices Act (July 25, 1994) (hereinafter Complaint).

⁴Complaint at 2.

⁵Complaint at 3; Defendants' Memorandum of Points and Authorities in Opposition to Motion for Class Certification (Mar. 30, 1995) at 2 (hereinafter Opposition to Certification).

⁶Complaint at 2; Opposition to Certification at 2.

⁷Opposition to Certification at 3; Complaint at 4.

⁸Pam Slater, "Cable TV Firm Under Fire for Late Charges," *Sacramento Bee*, Aug. 6, 1994, at B1.

⁹Price Waterhouse, *Report on Late Fee Revenues and Collection Costs Related to Delinquent Subscriber Accounts* (1994).

¹⁰See, e.g., *Waggener v. Television Signal Corp.*, No. 946142 (Cal. Super. Ct. San Francisco County 1992).

¹¹Clint Swett, "Judge OKs Pact to Settle Cable Suit," *Sacramento Bee*, Sept. 24, 1996, at B1.

¹²Complaint at 1–2.

¹³Complaint at 4.

¹⁴Complaint at 2.

¹⁵For example, the defendants never argued that they did not impose a late fee of \$5.00 during the period March 1992 through July 1994. See Answer to Complaint (Aug. 31, 1994) at 3.

¹⁶Cal. Bus. & Prof. Code § 17200 *et seq.*, defines and proscribes "any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising . . ." This broadly worded statute provides the basis for many causes of action, but is less relevant to this particular litigation than California Civil Code § 1671.

¹⁷Cal. Civ. Code § 1671(d). Consumer contracts are defined as those in which the contract is enforced against either "(1) A party to a contract for the retail purchase, or rental, by such party of personal property or services, primarily for the party's personal, family, or household purposes; or (2) A party to a lease of real property for use as a dwelling by the party or those dependent upon the party for support." § 1671(c).

¹⁸*Garrett v. Coast & Southern Federal Savings & Loan Ass'n*, 9 Cal. 3d 731, 740 (1973).

¹⁹*Id.* at 740; *Beasley v. Wells Fargo Bank*, 235 Cal. App. 3d 1383, 1390 (1991).

²⁰Plaintiff's Memorandum of Points and Authorities in Support of Motion for Preliminary Approval of Class Action Settlement (June 6, 1996) at 8 (hereinafter Motion for Preliminary Approval).

²¹Motion for Preliminary Approval at 9.

²²See, e.g., Opposition to Certification at 2–3.

²³Opposition to Certification at 3–4.

²⁴Motion for Preliminary Approval at 10. This estimate of revenues is higher than the \$4.6 million mentioned in the complaint because it covers a different period and is based on information brought forward during discovery.

²⁵*Garrett v. Coast & Southern Federal Savings & Loan Ass'n*, 9 Cal. 3d at 741; *Beasley v. Wells Fargo Bank*, 235 Cal. App. 3d at 1402–03.

²⁶Opposition to Certification at 4–5.

²⁷Swett, *supra* note 11.

²⁸Plaintiff's Memorandum of Points & Authorities in Support of Motion for Class Certification (Mar. 13, 1995) at 9–11 (hereinafter Motion for Class Certification).

²⁹Opposition to Certification at 8–24.

³⁰Order Certifying the Class (Apr. 25, 1995) at 3 (hereinafter Certification Order).

³¹Certification Order at 2–3.

³²Stipulation and Order for Notice to the Class Members of the Pendency of this Action (Jun. 6, 1995) at 2 (hereinafter Order for Notice).

- ³³Proposed Notice for Publication, Exhibit A to Order for Notice.
- ³⁴Defendants' Opposition to Certification at 4–5.
- ³⁵Motion for Preliminary Approval at 2.
- ³⁶Stipulation of Settlement (May 31, 1996) at 8, 15.
- ³⁷Cal. Civ. Proc. Code § 384(a).
- ³⁸Codified at Cal. Gov't Code §53088.7.
- ³⁹Plaintiff's Memorandum in Support of Motion For Final Approval of the Settlement & for Award of Attorney Fees, Costs & Special Award to the Named Plaintiff (Aug. 30, 1996) at 5 (hereinafter Motion for Final Approval).
- ⁴⁰Stipulation of Settlement at 8. The settlement amount was to be deposited into an interest-bearing account that would further augment the moneys available for claim payment. *Id.*
- ⁴¹Because the defendants and their counsel declined to be interviewed for this research, we were unable to ascertain the costs of notice of settlement or notice of certification.
- ⁴²Notice and Claim Form to be Mailed to Current Subscribers, Exhibit A to the [Proposed] Order Preliminarily Approving Settlement (May 31, 1996) (hereinafter Notice and Claim Form).
- ⁴³Motion for Final Approval at 3.
- ⁴⁴Notice of Motion for Preliminary Approval of Class Action Settlement at 1.
- ⁴⁵Motion for Final Approval at 2; [Proposed] Order Preliminarily Approving Settlement at 4.
- ⁴⁶Notice and Claim Form.
- ⁴⁷Motion for Final Approval at 7.
- ⁴⁸Declaration of Mark Anderson in Support of Motion for Final Approval of the Settlement & for an Award of Fees & Costs (Aug. 30, 1996) at 2.
- ⁴⁹Motion for Final Approval at 5. This should have yielded a total award to class counsel of \$515,101; however, an additional \$5,000 was eventually granted. Whether this represents an increase to the fee award or to the cost award (or some combination of the two) is unknown.
- ⁵⁰It appears that the incentive award was deducted from the settlement fund. See Memorandum of Points & Authorities in Support of Motion for Approval of Plaintiff's Recommendations for Distribution of Residual Funds (Jan. 24, 1997) at 2 (hereinafter referred to as Plaintiff's Recommendations for Distribution).
- ⁵¹*Donald v. Scripps-Howard Broadcasting* Civ. No. 95AS00850 (Cal. Super. Ct. Sacramento County 1996).
- ⁵²Notice of Entry of Judgment (Sept. 19, 1996); Final Judgment and Order of Dismissal (Sept. 19, 1996).
- ⁵³Stipulation of Settlement at 20.
- ⁵⁴Recommendation for Distribution, Page 2.
- ⁵⁵*Id.*
- ⁵⁶*Id.*
- ⁵⁷*Id.* Actual payments to the class claims administrator were \$27,603 and estimated future payments were \$21,000, for a total of \$48,603 in basic administration and notice costs. Because the settlement fund was placed in an interest-bearing account, \$750 in CPA fees for filing tax returns and an estimated \$17,000 in state and federal tax liabilities were also added to the overall fund administration figure.
- ⁵⁸*Id.* Of this amount, accrued interest accounted for \$12,120 after deducting estimated future CPA fees and tax liabilities.
- ⁵⁹Memorandum of Points & Authorities in Support of Motion for Approval of Plaintiff's Recommendations for Distribution of Residual Funds (Jan. 24, 1997) at 5–10.
- ⁶⁰"Order Establishing Trust and Agreement of Acceptance by Trustee to Govern the Administration of the Center for Access to the Courts Through Technology," undated copy supplied to the authors by Professor Kelso.