

1 **CLASS ACTIONS**

2 **Rule 32**

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4 **F Notice and exclusion.**

5 F(1) When ordering that an action be maintained as a class action under this rule, the court
6 shall direct that notice be given to some or all members of the class under subsection E(2) of
7 this rule, shall determine when and how this notice should be given and shall determine
8 whether, when, how, and under what conditions putative members may elect to be excluded
9 from the class. The matters pertinent to these determinations ordinarily include: (a) the nature
10 of the controversy and the relief sought; (b) the extent and nature of any member's injury or
11 liability; (c) the interest of the party opposing the class in securing a final resolution of the
12 matters in controversy; (d) the inefficiency or impracticality of separately maintained actions to
13 resolve the controversy; (e) the cost of notifying the members of the class; and (f) the possible
14 prejudice to members to whom notice is not directed. When appropriate, exclusion may be
15 conditioned on a prohibition against institution or maintenance of a separate action on some or
16 all of the matters in controversy in the class action or a prohibition against use in a separately
17 maintained action of any judgment rendered in favor of the class from which exclusion is
18 sought.

19 F(2)

20 (i) Prior to the entry of a judgment against a defendant the court shall request
21 members of the class who may be entitled to individual monetary recovery to submit a
22 statement in a form prescribed by the court requesting affirmative relief which may also, where
23 appropriate, require information regarding the nature of the loss, injury, claim, transactional
24 relationship, or damage.

25 (ii) The form of the statement shall be designed to meet the ends of justice. In
26 determining the language and form of the [statement] documents to be sent class members

1 under subsection F(2)(i) or (iii), the court shall consider at least: (a) the nature of the acts of
2 the defendant[,]; (b) the amount of knowledge a class member would have about the extent of
3 such member's damages[,]; (c) the nature of the class including the probable degree of
4 sophistication of its members and any special needs created by class members' disabilities;
5 (d) whether it is appropriate for the statement to be prepared in alternative formats, such
6 as large type, Braille, or in languages in addition to English[,]; and (e) the availability of
7 relevant information from sources other than the individual class members.

8 (iii) When the names and addresses of the class members can reasonably be
9 determined from the defendant's business records and individual monetary recoveries are
10 capable of calculation without the need for individualized adjudications, the court,
11 instead of requiring the statement referred to in subsection F(2)(i), may direct the
12 defendant to send each class member notice of (a) the amount of the monetary recovery
13 that has been calculated for that person and (b) that person's right to request exclusion
14 from the class. All class members who do not request exclusion within the time specified
15 by the court shall be deemed to have requested affirmative relief in the calculated
16 amount.

17 (iv) The amount of damages assessed against the defendant shall not exceed the total
18 amount of damages determined to be allowable by the court for [each] all individual class
19 members who [has] have filed [a] the statement required by the court under subsection F(2)(i)
20 or who are deemed to have requested affirmative relief under subsection F(2)(iii),

21 assessable court costs, and an award of attorney fees, if any, as determined by the court.

22 (v) If the parties agree and the court approves, any of the procedures set forth in
23 subsection F(2)(i) to subsection F(2)(iv) may be waived in a particular case.

24 F(3) *[Failure of]*If a class member fails to file [a] the statement required by the court *[will*
25 *be grounds for entry of judgment dismissing such class member's]* under subsection F(2)(i) or
26 if a class member requests exclusion under subsection F(2)(iii) within the time specified by

1 the court, that person's claim for [individual] monetary recovery shall be dismissed without
2 prejudice to the right to maintain an individual, but not a class, action for such claim.

3 F(4) Nothing in subsections F(2) or F(3) is intended to allow the court to award any
4 monetary recovery that is not claimed either because a class member failed to file the
5 statement required by the court under subsection F(2)(i), or because a class member
6 requested exclusion under subsection F(2)(iii) within the time specified by the court.

7 F[(4)][5] Plaintiffs shall bear costs of any notice ordered prior to a determination of liability.
8 The court may, however, order that defendant bear all or a specified part of the costs of any
9 notice included with a regular mailing by defendant to its current customers or employees. The
10 court may hold a hearing to determine how the costs of such notice shall be apportioned.

11 F[(5)][6] No duty of compliance with due process notice requirements is imposed on a
12 defendant by reason of the defendant including notice with a regular mailing by the defendant
13 to current customers or employees of the defendant under this section.

14 F[(6)][7] As used in this section, "customer" includes a person, including but not limited to a
15 student, who has purchased services or goods from a defendant.

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17 N **Attorney fees, costs, disbursements, and litigation expenses.**

18 N(1)(a) Attorney fees for representing a class are subject to control of the court.
19 N(1)(b) If under an applicable provision of law a defendant or defendant class is entitled
20 to attorney fees, costs, or disbursements from a plaintiff class, only representative parties and
21 those members of the class who have appeared individually are liable for those amounts. If a
22 plaintiff is entitled to attorney fees, costs, or disbursements from a defendant class, the court
23 may apportion the fees, costs, or disbursements among the members of the class.
24 N(1)(c) If the prevailing class recovers a judgment that can be divided for the purpose,
25 the court may order reasonable attorney fees and litigation expenses of the class to be paid from
26 the recovery.

- 1 N(1)(d) The court may order the adverse party to pay to the prevailing class its
2 reasonable attorney fees and litigation expenses if permitted by law in similar cases not
3 involving a class.
- 4 N(1)(e) In determining the amount of attorney fees for a prevailing class the court shall
5 consider the following factors:
- 6 N(1)(e)(i) The time and effort expended by the attorney in the litigation, including the
7 nature, extent, and quality of the services rendered;
- 8 N(1)(e)(ii) Results achieved and benefits conferred upon the class;
- 9 N(1)(e)(iii) The magnitude, complexity, and uniqueness of the litigation;
- 10 N(1)(e)(iv) The contingent nature of success; and
- 11 N(1)(e)(v) Appropriate criteria in [DR 2-106] **Rule 1.5** of the Oregon [Code] **Rules** of
12 Professional [*Responsibility*] **Conduct**.
- 13 N(2) Before a hearing under section C of this rule or at any other time the court
14 directs, the representative parties and the attorney for the representative parties shall file with
15 the court, jointly or separately:
- 16 N(2)(a) A statement showing any amount paid or promised them by any person for the
17 services rendered or to be rendered in connection with the action or for the costs and expenses
18 of the litigation and the source of all of the amounts;
- 19 N(2)(b) A copy of any written agreement, or a summary of any oral agreement, between
20 the representative parties and their attorney concerning financial arrangement or fees; and
- 21 N(2)(c) A copy of any written agreement, or a summary of any oral agreement, by the
22 representative parties or the attorney to share these amounts with any person other than a
23 member, regular associate, or an attorney regularly of counsel with the law firm of the
24 representative parties' attorney. This statement shall be supplemented promptly if additional
25 arrangements are made.

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1 ORCP 32 - 7/06/06 DRAFT as inclusion

2 F Notice and exclusion.

3 F(1) When ordering that an action be maintained as a class action under this rule, the court
4 shall direct that notice be given to some or all members of the class under subsection E(2) of
5 this rule, shall determine when and how this notice should be given and shall determine
6 whether, when, how, and under what conditions putative members may elect to be excluded
7 from the class. The matters pertinent to these determinations ordinarily include: (a) the nature
8 of the controversy and the relief sought; (b) the extent and nature of any member's injury or
9 liability; (c) the interest of the party opposing the class in securing a final resolution of the
10 matters in controversy; (d) the inefficiency or impracticality of separately maintained actions to
11 resolve the controversy; (e) the cost of notifying the members of the class; and (f) the possible
12 prejudice to members to whom notice is not directed. When appropriate, exclusion may be
13 conditioned on a prohibition against institution or maintenance of a separate action on some or
14 all of the matters in controversy in the class action or a prohibition against use in a separately
15 maintained action of any judgment rendered in favor of the class from which exclusion is
16 sought.

17 F(2)

18 (i) Prior to the entry of a judgment against a defendant the court shall request
19 members of the class who may be entitled to individual monetary recovery to submit a
20 statement in a form prescribed by the court requesting affirmative relief which may also, where
21 appropriate, require information regarding the nature of the loss, injury, claim, transactional
22 relationship, or damage.

23 (ii) The form of the statement shall be designed to meet the ends of justice. In
24 determining the language and form of the statement documents to be sent class members under
25 subsection F(2)(i) or (iii), the court shall consider at least: (a) the nature of the acts of the
26 defendant; (b) the amount of knowledge a class member would have about the extent of such

1 member's damages; (c) the nature of the class including the probable degree of sophistication
2 of its members and any special needs created by class members' disabilities; (d) whether it is
3 appropriate for the statement to be prepared in alternative formats, such as large type, Braille,
4 or in languages in addition to English; and (e) the availability of relevant information from
5 sources other than the individual class members.

6 (iii) When the names and addresses of the class members can reasonably be determined
7 from the defendant's business records and individual monetary recoveries are capable of
8 calculation without the need for individualized adjudications, the court, instead of requiring the
9 statement referred to in subsection F(2)(i), may direct the defendant to send each class member
10 notice of (a) the amount of the monetary recovery that has been calculated for that person and
11 (b) that person's right to request inclusion in the class.

12 (iv) The amount of damages assessed against the defendant shall not exceed the total
13 amount of damages determined to be allowable by the court for each all individual class
14 members who has have filed a the statement required by the court under subsection F(2)(i) or
15 (iii), assessable court costs, and an award of attorney fees, if any, as determined by the court.

16 (v) If the parties agree and the court approves, any of the procedures set forth in
17 subsection F(2)(i) to subsection F(2)(iv) may be waived in a particular case.

18 F(3) Failure of If a class member fails to file a the statement required by the court will be
19 grounds for entry of judgment dismissing such class member's under subsection F(2)(i) or (iii),
20 that person's claim for individual monetary recovery shall be dismissed without prejudice to
21 the right to maintain an individual, but not a class, action for such claim.

22 F(4) Nothing in subsections F(2) or F(3) is intended to allow the court to award any
23 monetary recovery that is not claimed either because a class member failed to file the statement
24 required by the court under subsection F(2)(i) or (iii) within the time specified by the court.

25 F(4)(5) Plaintiffs shall bear costs of any notice ordered prior to a determination of liability. The
26 court may, however, order that defendant bear all or a specified part of the costs of any notice

1 included with a regular mailing by defendant to its current customers or employees. The court
2 may hold a hearing to determine how the costs of such notice shall be apportioned.

3 F(5)(6)No duty of compliance with due process notice requirements is imposed on a defendant
4 by reason of the defendant including notice with a regular mailing by the defendant to current
5 customers or employees of the defendant under this section.

6 F(6)(7)As used in this section, "customer" includes a person, including but not limited to a
7 student, who has purchased services or goods from a defendant.

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9 N Attorney fees, costs, disbursements, and litigation expenses.

10 N(1)(a) Attorney fees for representing a class are subject to control of the court.

11 N(1)(b) If under an applicable provision of law a defendant or defendant class is entitled
12 to attorney fees, costs, or disbursements from a plaintiff class, only representative parties and
13 those members of the class who have appeared individually are liable for those amounts. If a
14 plaintiff is entitled to attorney fees, costs, or disbursements from a defendant class, the court
15 may apportion the fees, costs, or disbursements among the members of the class.

16 N(1)(c) If the prevailing class recovers a judgment that can be divided for the purpose,
17 the court may order reasonable attorney fees and litigation expenses of the class to be paid from
18 the recovery.

19 N(1)(d) The court may order the adverse party to pay to the prevailing class its
20 reasonable attorney fees and litigation expenses if permitted by law in similar cases not
21 involving a class.

22 N(1)(e) In determining the amount of attorney fees for a prevailing class the court shall
23 consider the following factors:

24 N(1)(e)(i) The time and effort expended by the attorney in the litigation, including the
25 nature, extent, and quality of the services rendered;

26 N(1)(e)(ii) Results achieved and benefits conferred upon the class;

- 1 N(1)(e)(iii) The magnitude, complexity, and uniqueness of the litigation;
- 2 N(1)(e)(iv) The contingent nature of success; and
- 3 N(1)(e)(v) Appropriate criteria in DR 2-106 Rule 1.5 of the Oregon Code Rules of
- 4 Professional Responsibility Conduct.
- 5 N(2) Before a hearing under section C of this rule or at any other time the court
- 6 directs, the representative parties and the attorney for the representative parties shall file with
- 7 the court, jointly or separately:
- 8 N(2)(a) A statement showing any amount paid or promised them by any person for the
- 9 services rendered or to be rendered in connection with the action or for the costs and expenses
- 10 of the litigation and the source of all of the amounts;
- 11 N(2)(b) A copy of any written agreement, or a summary of any oral agreement, between
- 12 the representative parties and their attorney concerning financial arrangement or fees; and
- 13 N(2)(c) A copy of any written agreement, or a summary of any oral agreement, by the
- 14 representative parties or the attorney to share these amounts with any person other than a
- 15 member, regular associate, or an attorney regularly of counsel with the law firm of the
- 16 representative parties' attorney. This statement shall be supplemented promptly if additional
- 17 arrangements are made.

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1 ORCP 32 - 7/06/06 DRAFT as exclusion

2 F Notice and exclusion.

3 F(1) When ordering that an action be maintained as a class action under this rule, the court
4 shall direct that notice be given to some or all members of the class under subsection E(2) of
5 this rule, shall determine when and how this notice should be given and shall determine
6 whether, when, how, and under what conditions putative members may elect to be excluded
7 from the class. The matters pertinent to these determinations ordinarily include: (a) the nature
8 of the controversy and the relief sought; (b) the extent and nature of any member's injury or
9 liability; (c) the interest of the party opposing the class in securing a final resolution of the
10 matters in controversy; (d) the inefficiency or impracticality of separately maintained actions to
11 resolve the controversy; (e) the cost of notifying the members of the class; and (f) the possible
12 prejudice to members to whom notice is not directed. When appropriate, exclusion may be
13 conditioned on a prohibition against institution or maintenance of a separate action on some or
14 all of the matters in controversy in the class action or a prohibition against use in a separately
15 maintained action of any judgment rendered in favor of the class from which exclusion is
16 sought.

17 F(2)

18 (i) Prior to the entry of a judgment against a defendant the court shall request
19 members of the class who may be entitled to individual monetary recovery to submit a
20 statement in a form prescribed by the court requesting affirmative relief which may also, where
21 appropriate, require information regarding the nature of the loss, injury, claim, transactional
22 relationship, or damage.

23 (ii) The form of the statement shall be designed to meet the ends of justice. In
24 determining the language and form of the statement documents to be sent class members under
25 subsection F(2)(i) or (iii), the court shall consider at least: (a) the nature of the acts of the
26 defendant; (b) the amount of knowledge a class member would have about the extent of such

1 member's damages; (c) the nature of the class including the probable degree of sophistication
2 of its members and any special needs created by class members' disabilities; (d) whether it is
3 appropriate for the statement to be prepared in alternative formats, such as large type, Braille,
4 or in languages in addition to English; and (e) the availability of relevant information from
5 sources other than the individual class members.

6 (iii) When the names and addresses of the class members can reasonably be determined
7 from the defendant's business records and individual monetary recoveries are capable of
8 calculation without the need for individualized adjudications, the court, instead of requiring the
9 statement referred to in subsection F(2)(i), may direct the defendant to send each class member
10 notice of (a) the amount of the monetary recovery that has been calculated for that person and
11 (b) that person's right to request exclusion from the class. All class members who do not
12 request exclusion within the time specified by the court shall be deemed to have requested
13 affirmative relief.

14 (iv) The amount of damages assessed against the defendant shall not exceed the total
15 amount of damages determined to be allowable by the court for ~~each~~ all individual class
16 members ~~who has~~ have filed ~~a~~ the statement required by the court under subsection F(2)(i) or
17 who are deemed to have requested affirmative relief under subsection F(2)(iii), assessable court
18 costs, and an award of attorney fees, if any, as determined by the court.

19 (v) If the parties agree and the court approves, any of the procedures set forth in
20 subsection F(2)(i) to subsection F(2)(iv) may be waived in a particular case.

21 F(3) Failure of ~~If~~ a class member fails to file ~~a~~ the statement required by the court ~~will be~~
22 grounds for entry of judgment dismissing such class member's under subsection F(2)(i) or if a
23 class member requests exclusion under subsection F(2)(iii) within the time specified by the
24 court, ~~that person's claim for individual monetary recovery shall be dismissed~~ without
25 prejudice to the right to maintain an individual, but not a class, action for such claim.

26 ////

1 F(4) Nothing in subsections F(2) or F(3) is intended to allow the court to award any
2 monetary recovery that is not claimed either because a class member failed to file the statement
3 required by the court under subsection F(2)(i), or because a class member requested exclusion
4 under subsection F(2)(iii) within the time specified by the court.

5 F(4)(5) Plaintiffs shall bear costs of any notice ordered prior to a determination of liability. The
6 court may, however, order that defendant bear all or a specified part of the costs of any notice
7 included with a regular mailing by defendant to its current customers or employees. The court
8 may hold a hearing to determine how the costs of such notice shall be apportioned.

9 F(5)(6) No duty of compliance with due process notice requirements is imposed on a defendant
10 by reason of the defendant including notice with a regular mailing by the defendant to current
11 customers or employees of the defendant under this section.

12 F(6)(7) As used in this section, "customer" includes a person, including but not limited to a
13 student, who has purchased services or goods from a defendant.

14 * * * * *

15 N Attorney fees, costs, disbursements, and litigation expenses.

16 N(1)(a) Attorney fees for representing a class are subject to control of the court.

17 N(1)(b) If under an applicable provision of law a defendant or defendant class is entitled
18 to attorney fees, costs, or disbursements from a plaintiff class, only representative parties and
19 those members of the class who have appeared individually are liable for those amounts. If a
20 plaintiff is entitled to attorney fees, costs, or disbursements from a defendant class, the court
21 may apportion the fees, costs, or disbursements among the members of the class.

22 N(1)(c) If the prevailing class recovers a judgment that can be divided for the purpose,
23 the court may order reasonable attorney fees and litigation expenses of the class to be paid from
24 the recovery.

25 N(1)(d) The court may order the adverse party to pay to the prevailing class its
26 reasonable attorney fees and litigation expenses if permitted by law in similar cases not

1 involving a class.

2 N(1)(e) In determining the amount of attorney fees for a prevailing class the court shall
3 consider the following factors:

4 N(1)(e)(i) The time and effort expended by the attorney in the litigation, including the
5 nature, extent, and quality of the services rendered;

6 N(1)(e)(ii) Results achieved and benefits conferred upon the class;

7 N(1)(e)(iii) The magnitude, complexity, and uniqueness of the litigation;

8 N(1)(e)(iv) The contingent nature of success; and

9 N(1)(e)(v) Appropriate criteria in DR 2-106 Rule 1.5 of the Oregon Code Rules of
10 Professional Responsibility Conduct.

11 N(2) Before a hearing under section C of this rule or at any other time the court
12 directs, the representative parties and the attorney for the representative parties shall file with
13 the court, jointly or separately:

14 N(2)(a) A statement showing any amount paid or promised them by any person for the
15 services rendered or to be rendered in connection with the action or for the costs and expenses
16 of the litigation and the source of all of the amounts;

17 N(2)(b) A copy of any written agreement, or a summary of any oral agreement, between
18 the representative parties and their attorney concerning financial arrangement or fees; and

19 N(2)(c) A copy of any written agreement, or a summary of any oral agreement, by the
20 representative parties or the attorney to share these amounts with any person other than a
21 member, regular associate, or an attorney regularly of counsel with the law firm of the
22 representative parties' attorney. This statement shall be supplemented promptly if additional
23 arrangements are made.

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F Notice and exclusion.

F(1) When ordering that an action be maintained as a class action under this rule, the court shall direct that notice be given to some or all members of the class under subsection E(2) of this rule, shall determine when and how this notice should be given and shall determine whether, when, how, and under what conditions putative members may elect to be excluded from the class. The matters pertinent to these determinations ordinarily include: (a) the nature of the controversy and the relief sought; (b) the extent and nature of any member's injury or liability; (c) the interest of the party opposing the class in securing a final resolution of the matters in controversy; (d) the inefficiency or impracticality of separately maintained actions to resolve the controversy; (e) the cost of notifying the members of the class; and (f) the possible prejudice to members to whom notice is not directed. When appropriate, exclusion may be conditioned on a prohibition against institution or maintenance of a separate action on some or all of the matters in controversy in the class action or a prohibition against use in a separately maintained action of any judgment rendered in favor of the class from which exclusion is sought.

F(2) Prior to the entry of a judgment against a defendant the court shall request members of the class who may be entitled to individual monetary recovery to submit a statement in a form prescribed by the court requesting affirmative relief which may also, where appropriate, require information regarding the nature of the loss, injury, claim, transactional relationship, or damage. Notwithstanding the foregoing, no such statement shall be required when: (a) the parties agree to waive statements, and the court approves; or (b) the names and addresses of class members are reasonably identifiable from the defendant's business records and individual monetary recovery are capable of calculation without the need for individualized hearings. When statements are dispensed with under the preceding sentence, that act shall not be interpreted as allowing class members to receive a share of any unclaimed monetary recovery (including without limitation, under a theory of "fluid class recovery" or *cy pres*). The form of the statement shall be designed to meet the ends of justice. In determining the language of the request and the form of the statement, the court shall consider at least: (a) the nature of the acts of the defendant, (b) the amount of knowledge a class member would have about the extent of such member's damages, (c) the nature of the class including the probable degree of sophistication of its members and any special needs created by class members' disabilities, (d) whether it is appropriate for the statement to be prepared in alternative formats, such as large type, Braille, or in languages other than English, (e) whether it is appropriate to address a request for statements to an individual or entity other than the class member, and (f) the availability of relevant information from sources other than the individual class members. If statements are required by the court, the The amount of damages assessed against the defendant shall not exceed the total amount of damages determined to be allowable by the court for each individual class member who has filed a statement required by the court, assessable court costs, and an award of attorney fees, if any, as determined by the court.

F(3) Failure of a class member to file a statement required by the court will be grounds for entry of judgment dismissing such class member's claim for individual monetary recovery without prejudice to the right to maintain an individual, but not a class, action for such claim.

F(4) Plaintiffs shall bear costs of any notice ordered prior to a determination of liability. The court may, however, order that defendant bear all or a specified part of the costs of any notice included with a regular mailing by defendant to its current customers or employees. The court may hold a hearing to determine how the costs of such notice shall be apportioned.

F(5) No duty of compliance with due process notice requirements is imposed on a defendant by reason of the defendant including notice with a regular mailing by the defendant to current customers or employees of the defendant under this section.

F(6) As used in this section, "customer" includes a person, including but not limited to a student, who has purchased services or goods from a defendant.

RULE 32
CLASS ACTIONS

* * * *

5 F. Notice and exclusion.

6 F(1) When ordering that an action be maintained as a class
7 action under this rule, the court shall direct that notice be
8 given to some or all members of the class under subsection E(2) of
9 this rule, shall determine when and how this notice should be
10 given and shall determine whether, when, how, and under what
11 conditions putative members may elect to be excluded from the
12 class. The matters pertinent to these determinations ordinarily
13 include: (a) the nature of the controversy and the relief sought;
14 (b) the extent and nature of any member's injury or liability; (c)
15 the interest of the party opposing the class in securing a final
16 resolution of the matters in controversy; (d) the inefficiency or
17 impracticality of separately maintained actions to resolve the
18 controversy; (e) the cost of notifying the members of the class;
19 and (f) the possible prejudice to members to whom notice is not
20 directed. When appropriate, exclusion may be conditioned on a
21 prohibition against institution or maintenance of a separate
22 action on some or all of the matters in controversy in the class
23 action or a prohibition against use in a separately maintained
24 action of any judgment rendered in favor of the class from which
25 exclusion is sought.

26 F(2) Prior to the entry of a final judgment against a
27 defendant the court [shall request] may require members of the
28 class who may be entitled to individual monetary recovery to
29 submit a [statement in a form] claim form prescribed by the court
30 requesting affirmative relief which may also, where appropriate,
31 require information regarding the nature of the loss, injury,
32 claim, transactional relationship, or damage. When required,
33 [T]he [statement] claim form shall be designed to meet the ends
34 of justice. In determining [the form of the statement] whether to
35 require a claim form and what form it shall take, the court shall

36 consider the nature of the acts of the defendant, the amount of
37 knowledge a class member would have about the extent of such
38 member's damages, the nature of the class including the probable
39 degree of sophistication of its members, the probable cost of
40 administering claim forms, the possible prejudice to the parties
41 and class members of omitting the claim form, the probable size of
42 the class, the probable size of individual class members' claims,
43 and the availability of relevant information from sources other
44 than the individual class members. When the court requires a
45 claim form, [T]he amount of damages assessed against the
46 defendant shall not exceed the total amount of damages determined
47 to be allowable by the court for each individual class member who
48 has filed a statement required by the court, assessable court
49 costs, and an award of attorney fees, if any, as determined by the
50 court.

51 F(3) When a claim form is required, [F]ailure of a class
52 member to file a statement required by the court will be grounds
53 for entry of judgment dismissing such class member's claim for
54 individual monetary recovery without prejudice to the right to
55 maintain an individual, but not a class, action for such claim.

56 F(4) Plaintiffs shall bear costs of any notice ordered prior
57 to a determination of liability. The court may, however, order
58 that defendant bear all or a specified part of the costs of any
59 notice included with a regular mailing by defendant to its current
60 customers or employees. The court may hold a hearing to determine
61 how the costs of such notice shall be apportioned.

62 F(5) No duty of compliance with due process notice
63 requirements is imposed on a defendant by reason of the defendant
64 including notice with a regular mailing by the defendant to
65 current customers or employees of the defendant under this section.

66 F(6) As used in this section, "customer" includes a person,
67 including but not limited to a student, who has purchased services
68 or goods from a defendant.