

17-961 FRANK V. GAOS

DECISION BELOW: 869 F.3d 737

LOWER COURT CASE NUMBER: 15-15858

QUESTION PRESENTED:

Federal Rule of Civil Procedure 23(b)(3) permits representatives to maintain a class action where so doing "is superior to other available methods for fairly and efficiently adjudicating the controversy," and Rule 23(e)(2) requires that a settlement that binds class members must be "fair, reasonable, and adequate." In this case, the Ninth Circuit upheld approval of an \$8.5 million settlement that disposed of absent class members' claims while providing them zero monetary relief. Breaking with decisions of the Third Circuit, Fifth Circuit, Seventh Circuit, and Eighth Circuit that require compensating class members before putting class action proceeds to other uses, the Ninth Circuit held that the settlement's award of all net proceeds to third-party organizations selected by the defendant and class counsel was a fair and adequate remedy under the trust-law doctrine of *cy pres*. The question presented is:

Whether, or in what circumstances, a *cy pres* award of class action proceeds that provides no direct relief to class members supports class certification and comports with the requirement that a settlement binding class members must be "fair, reasonable, and adequate."

CERT. GRANTED 4/30/2018