

## **CALIFORNIA COURT OF APPEAL CLARIFIES THAT CLASS ACTION SETTLEMENTS MOOT APPEALS OF PRE-SETTLEMENT RULINGS**

The California Court of Appeal in Larner v. Los Angeles Doctors Hospital Associates, L.P., Case No. B202085 (2d Dist, 1<sup>st</sup> Div., December 8, 2008), has clarified that a named plaintiff's settlement of a purported class action following an adverse ruling on the merits and a denial of class certification moots any appeal of the merits and class certification rulings.

The plaintiff in Larner brought a purported class action on behalf of herself and current and former employees, claiming that her employer violated California overtime laws by failing to pay premium overtime wages, incorrectly calculating overtime pay rates, and failing to keep accurate and complete wage records. Larner, Slip Op. at 2. After the Superior Court granted summary adjudication against her on the claim for failing to pay overtime wages and she unsuccessfully sought class certification on the remaining wage calculation and recordkeeping claims, the parties reached a settlement and entered a Stipulation for Entry of Final Judgment. Id. at 3. The Stipulation provided that the parties "have entered into a Settlement Agreement whereby the parties intend to settle and resolve all disputes," but that the plaintiff "reserv[es] her right to seek appellate review" of the summary adjudication and denial of class certification. Id. at 3-4.

The Court of Appeal dismissed the appeal as moot. The Court began with the principle that "[t]he parties' intent cannot compel this court to issue an advisory opinion on issues in which, after the settlement, [the plaintiff] no longer retains any individual, personal stake. In general, we cannot grant plaintiff any relief by reversing an order for claims that have been settled and compromised." Larner, Slip Op. at 6 (citations and internal quotations omitted).

The Court acknowledged that a class representative's settlement of "her individual claims does not necessarily extinguish the interests of the members of the class she purported to represent" because a class representative "assumes a fiduciary obligation to the members of the class, surrendering any right to compromise the group action in return for an individual gain." Larner, Slip Op. at 6. Thus, a trial court is obligated to independently evaluate any proposed settlement by a class representative to determine whether the settlement is sufficiently fair to the class. Id. at 6-7. And, if it is not sufficiently fair to the class, the trial court then must determine (1) whether the settling plaintiff "is no longer a suitable representative" of the class and (2) if she is not, grant "leave to amend the complaint to redefine the class, or add new class representatives, or both." Id. at 7. "This rule prevents a prospective defendant from avoiding a class action by 'picking off' prospective class-action plaintiffs one-by-one, settling the individual claim in an attempt to disqualify the named plaintiff as a class representative." Id.

However, the Court concluded that, in view of the trial court's previous grant of summary adjudication, the settlement of the claim for failure to pay overtime was sufficiently fair to the class to extinguish its interests regarding that claim. The Court emphasized that the plaintiff had never sought class certification on that claim and that, in any event, the summary adjudication was "on a substantive ground that would apply equally to deny relief" to other workers situated similarly to the plaintiff. Larner, Slip Op. at 8. The settlement of that claim

therefore could not “be viewed as ‘picking off’” the “named plaintiff on a valid class claim by offering a small settlement.” Id.

Finally, the Court concluded that, because the plaintiff’s settlement left her with no continuing personal stake in the action, her appeal of the denial of class certification likewise was not justiciable. Larner, Slip Op. at 9-14. The Court distinguished cases in which federal courts have “allowed named plaintiffs whose individual claims were mooted to appeal denials of class certification” because they retained cognizable interests in the having certification granted. Id. at 10-11. In one such case, for example, the settling plaintiffs “retained a private interest in shifting a portion of their fees and costs to successful class litigants if the class eventually was certified and prevailed.” Id. at 11 (citing Deposit Guar. Nat’l Bank v. Roper, 445 U.S. 326 (1980)). In contrast, the plaintiff in Larner did “not assert on appeal that she reserved any right to shift attorney fees to other class members” or that she had any other cognizable post-settlement interest in the outcome of any certification of the class. Id. at 14. “She therefore retained no justiciable interest in the litigation.” Id.

Larner is a reminder that parties cannot make a case justiciable by agreement, which means that a settlement usually will prevent parties from seeking appellate review or otherwise challenging unfavorable pre-settlement rulings on the merits. Of course, settling parties who wish to minimize publicity regarding a pre-settlement decision can ask that the decision not be published. And parties who have compelling reasons to keep a case file confidential can request that it be sealed. However, because courts have broad discretion regarding the sealing of files and essentially unlimited discretion regarding the publication of decisions, there is no way to be certain that such a request will be granted. Thus, a party who agrees to request depublication or sealing as part of a settlement agreement should make clear in the agreement that a properly filed request for that relief satisfies the party’s obligation, regardless of whether the relief is granted.