



## Employment Law Note

August 2020

# Plaintiff's Proposed Wage & Hour Class Action is Moot After Individual Settlement



By **Matthew Kelly**, [mkelly@sebrisbusto.com](mailto:mkelly@sebrisbusto.com)

In *Brady v. Autozone Stores, Inc.*, Case No. 19-35122 (9th Cir. 2020), the Ninth Circuit dismissed a putative wage and hour class action after the individual plaintiff settled his individual claims. The panel held that class claims become moot when “a class representative voluntarily settles only his individual claims without indicating any financial stake in the unresolved class claims.”

### The Case

The case was a proposed wage and hour class action for alleged violations of Washington’s meal break laws. The plaintiff, Michael Brady, sought damages individually and on behalf of a putative class. To certify a class, a plaintiff must prove that he can meet the requirements of Fed. R. Civ. P. 23(a)—*i.e.*, numerosity, commonality, typicality, and adequacy of representation—plus one of the 23(b) categories. Brady moved for class certification, but the district court denied the motion and later declined to modify its ruling.

Brady then settled his individual claims for \$5,000. The settlement agreement resolved his “claims to costs or attorneys’ fees” and was “not intended to settle or resolve [Brady’s] Class Claims.” Notably, the agreement “did not provide that [the plaintiff] would be entitled to any financial reward if the unresolved class claims were ultimately successful.”

The parties filed a stipulation in the district court explaining that the settlement agreement resolved all of Brady’s individual claims, “including but not limited to claims for failure to provide meal periods, unpaid wages, wrongfully withheld wages, unfair business practices, and attorneys’ fees.” The district court then entered a final judgment, and Brady appealed the district court’s denial of his motion for class certification.

The Ninth Circuit’s dismissal of the case hinged on the fact that Brady no longer maintained any financial interest in the outcome of the litigation. The Court looked to its prior case law to address the issue. In *Narouz v. Charter Communications, LLC*, 591 F.3d 1261 (9th Cir. 2010), the Ninth Circuit held that a class representative maintained “a continued financial interest in the advancement of the class claims” when the language of the settlement agreement stated that the class representative would receive an “award enhancement fee” if a class were certified and that he did not release claims for “attorney’s fees and costs.”

In *Evon v. Law Offices of Sidney Mickell*, 688 F.3d 1015 (9th Cir. 2012), the representative plaintiff accepted a Rule 68 offer of judgment that settled her individual claims but was silent as to her class claims. Because the settlement agreement made no mention of class-based claims, the Ninth Circuit in *Evon* found that it could not be said that the plaintiff contracted away her class claims and, therefore, her class claims were not moot. In the *Brady* decision, however, the Ninth Circuit noted that *Evon* did not “directly address

whether the class representative maintained a 'continued financial interest.'"

Finally, in *Campion v. Old Republic Prot. Co.*, 775 F.3d 1144 (9th Cir. 2014), the plaintiff settled his individual claims, but the settlement agreement explicitly did not resolve his class claims. Under *Campion*, a plaintiff must retain "a more concrete interest"—that is a 'financial interest'—to avoid mootness." In that case, the Ninth Circuit held that the representative's claims were moot because the settlement agreement at issue did not provide additional compensation for the plaintiff upon resolution of the class claims beyond his individual settlement.

Under these three cases, the Ninth Circuit held that Brady's claims were moot. The settlement agreement did not indicate that he would receive additional compensation for the class claims, nor did Brady have a possibility of an award of attorneys' fees. Although Brady's settlement agreement stated explicitly that it did not resolve his class claims, he did not retain any financial stake. The panel rejected Brady's arguments to the contrary. First, there was no indication in the settlement agreement that Brady could or would receive an enhancement award, and the Ninth Circuit concluded that it could not assume "Brady maintains

a financial stake in the outcome of this case merely because of a potential enhancement award." Second, although Brady argued that he would be liable to his attorneys for \$35,562.73 in advanced litigation costs, the Ninth Circuit concluded there was no evidence of those obligations.

Accordingly, the Ninth Circuit held "that when a class representative voluntarily settles his individual claims, he must do more than expressly leave class claims unresolved to avoid mootness."

## Key Takeaways

This case serves as a reminder that an employer defending against a proposed class action can try to resolve the allegations individually with the representative plaintiff. In doing so, however, employers should consult legal counsel to discuss their expectations and goals, as well as what should and should not be addressed in the settlement agreement. For questions about the *Brady* opinion and its implications for employers, please contact us at Sebris Busto James.

For more information about this month's Employment Law Note  
contact us at 425-454-4233



We publish the Employment Law Note to inform clients and friends of developments in labor and employment relations law. This Note is not intended, nor should it be used, as a substitute for specific legal advice or opinions. Legal counsel can be given only in response to inquiries regarding particular factual situations. © 2020 Sebris Busto James. All rights reserved.