

Settling Plaintiff May Still Have Standing And Adequacy To Pursue Class Action and PAGA Claims

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A California federal judge recently certified a class of at least 843 Cinemark workers who allege Cinemark, a movie theater chain, failed to properly list overtime rates on employee wage statements, notwithstanding the fact that the purported class representative, Silken Brown, had settled her individual claim during the pending litigation. In opposing class certification, Cinemark raised challenges to Brown's typicality as to the class and adequacy to represent the class as a result of Brown's individual settlement.

The Court rejected Cinemark's argument that defenses unique to Brown (i.e., that she lacked standing because she settled her individual claim) rendered her claims not typical of the class, holding that "[w]hile Brown settled her individual claims, the parties agreed that she would retain her personal stake in the advancement of the class claims." Relying on *Narouz v. Charter Commc'ns*, the Court held "a class representative may retain her interest in the class if her individual settlement agreement specifically carves out a personal stake," and here, "Brown's settlement agreement states that she 'will retain her personal stake and continued financial interest in the advancement of the class claims and the Private Attorneys General Act ('PAGA') claims.'"

The Court also rejected Cinemark's argument that, since Brown settled her individual claim, she lacked incentive to represent the class and her interests no longer aligned with the class, rendering her an inadequate class representative. The Court found that Brown met the adequacy element for class certification because "Brown has demonstrated and is demonstrating vigorous pursuit of the claims. Brown and her counsel have been litigating this case for years, completing an individual settlement with the intent to appeal, prevailing on that appeal, and now pursuing a second class certification motion for the direct wage claim."

Employers litigating class action and PAGA claims should consult their attorneys in any contemplated direct settlement efforts with class representatives and putative class members to preserve their potential defenses and arguments against class certification.

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