



---

Portfolio Media, Inc. | 648 Broadway, Suite 200 | New York, NY 10012 | [www.law360.com](http://www.law360.com)  
Phone: +1 212 537 6331 | Fax: +1 212 537 6371 | [customerservice@portfoliomedia.com](mailto:customerservice@portfoliomedia.com)

---

## A Silver Bullet Against Wage-And-Hour Actions?

*Law360, New York (July 20, 2009)* -- Under California law, an employer may not "settle" a wage claim in exchange for a release agreement unless: (a) the employer pays the actual wages due in consideration for the release, or (b) a genuine dispute exists as to whether or not wages are actually due.

The latter is the situation in which the parties found themselves in *Chindarah v. Pick Up Stix, Inc.*, a case recently decided by the Fourth Appellate District in California, and left untouched by the California Supreme Court.

At issue in *Chindarah* was California Labor Code section 206.5 which prohibits employees from waiving their rights to receive wages due. Section 206.5(a) specifically, states:

An employer shall not require the execution of a release of a claim or right on account of wages due...unless payment of those wages has been made. A release required or executed in violation of the provisions of this section shall be null and void ...

The employer in *Chindarah*, *Pick Up Stix*, entered into individual settlements with and obtained releases from the majority of putative class members in an action asserting claims for unpaid overtime, penalties and interest, due to the alleged misclassification of general managers and assistant general managers as exempt from overtime pay.

This occurred after the efforts by *Pick Up Stix* to resolve the case with opposing counsel failed.

Ultimately several hundred putative class members accepted *Pick Up Stix*' settlement offers and signed release agreements, thereby eliminating the potential for class certification.

In the interest of making full disclosure, at the time settlement offers were extended to the putative class members, *Pick Up Stix* provided each putative class member with

copies of the lawsuit, two mailings by plaintiffs' counsel and the proposed release agreement. The putative class members were invited to read the documents provided.

In signing the release agreements, putative class members agreed to release all claims, not to participate in any class action that may include any of the released claims and acknowledged they spent more than 50 percent of their work day performing managerial duties, consistent with the company's written policies and procedures.

The steps taken by Pick Up Stix in resolving the matter were carefully planned and implemented to ensure complete compliance with the law with respect to the effected employees.

Following the settlement, eight of the putative class members who accepted Pick Up Stix' settlement offer and signed release agreements, joined the misclassification lawsuit against Pick Up Stix, alleging that the release agreements they signed were not enforceable under Section 206.5(a).

Pick Up Stix moved for summary judgment against these plaintiffs arguing that because a bona fide dispute existed as to whether wages were due to any putative class member, it had the right to resolve the claims directly with putative class members and to require release agreements.

The trial court agreed with Pick Up Stix and granted summary judgment against the settling plaintiffs, who thereafter appealed.

The Fourth District Court of Appeal agreed with Pick Up Stix, allowing for the release of a claim for unpaid wages where there was a bona fide dispute over whether any wages were owed.

Had the court decided the case differently, it would have seriously undermined the compelling public policy which supports resolution of litigation and would have limited, if not prohibited employers and employees from negotiating settlements of disputed claims.

This would have also run afoul of Labor Code section 206.5, the principle of judicial economy, and the freedom of contract provided for in the California Constitution.

On June 10, 2009, the California Supreme Court denied the plaintiffs' petition for review in Chindarah, affirming the decision of both the trial court and the Fourth District.

In another recent case also denied review by the California Supreme Court, *Watkins v. Wachovia Corp.*, two employees brought suit on behalf of all employees not paid overtime as a result of allegedly being misclassified as exempt.

Prior to filing suit, one of the plaintiffs accepted an enhanced benefits package in exchange for signing a release at the time of her termination, despite having in her possession documentation of what she later claimed was unpaid overtime work.

The trial court in *Watkins* granted summary judgment for Wachovia and the Court of Appeal affirmed, citing *Chindarah*:

"When a bona fide dispute exists, the disputed amounts are not 'due,' and the bona fide dispute can be voluntarily settled with a release and a payment — even if the payment is for an amount less than the total wages claimed by the employee."

*Watkins* also highlights a second avenue of attack against class actions. The remaining plaintiff in *Watkins* settled her individual claims after class certification was denied, but attempted to reserve her right to appeal the denial of certification on behalf of the putative class.

Wachovia moved to dismiss the appeal because the plaintiff no longer had standing to pursue the class claims. The Second Appellate District agreed with Wachovia, concluding that the plaintiff lacked standing to appeal even by asserting an economic interest in class certification, because she was no longer a member of the putative class.

The *Watkins* court reasoned that the duty to represent the class should not be confused with an additional claim for relief:

"A representative plaintiff still only possesses a single claim for relief — the plaintiff's own. That the plaintiff has undertaken to also sue 'for the benefit of all' does not mean that the plaintiff has somehow obtained a 'class claim' for relief that can be asserted independent of the plaintiff's own claim."

This was the same conclusion reached by the Ninth Circuit in *Smith v. T-Mobile*.

In the end the question remains: Do defendants finally have the elusive silver bullet when it comes to battling wage-and-hour class actions? Not surprisingly, the answer is, "it depends."

Although defendants do have options when it comes to settlement of wage-and-hour putative class actions, they must exercise caution by thoroughly analyzing the alternatives available to them under applicable law and the facts unique to their case.

In doing so, innovative ways of concluding litigation can be developed that may lead to substantial savings in the end, suiting plaintiffs, putative class members and employers alike, who do not wish to be a part of protracted litigation.

--By Maria C. Roberts, Peter B. Marez and Emily J. Fox, Shea Stokes Roberts & Wagner ALC

*Maria Roberts and Peter Marez are both shareholders at Shea Stokes Roberts & Wagner in the firm's San Diego office. Emily Fox is an associate with the firm in the San Diego office. Ms. Roberts led the team defending Pick Up Stix in the Chindarah matter.*

*The opinions expressed are those of the authors and do not necessarily reflect the views of Portfolio Media, publisher of Law360.*