Martinez v. AutoZone

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Objectors Claudia Moreno and Michelle Medrano appeal from the judgment approving the class action settlement between plaintiffs Edgar Martinez, Ronald Carrillo and Edwin Cano and defendant AutoZone, Inc. Objectors contend that safeguards to protect absent class members like themselves failed as the judgment released AutoZone from claims that were never pled, never referenced in the proposed stipulation of settlement or included in the notice sent to absent class members. Objectors further contend the settlement approved by the court was inadequate, unreasonable and unfair in that the court did not analyze the required factors for approving a settlement and, in particular, did not receive adequate information. We reverse and remand with directions to enter a judgment conforming to the settlement.

FACTUAL AND PROCEDURAL SYNOPSIS

I. Pleadings

On March 2, 2004, three AutoZone employees filed a putative class action to recover penalties and damages for alleged violations of the Labor Code and Industrial Welfare Commission orders for: unlawful deductions from wages; failure to provide breaks and lunch periods in violation of Labor Code section[1] 226.7 and Code of Regulations section 11070; failure to provide itemized statements in violation of section 226; failure to provide mileage reimbursement in violation of section 2802; failure to pay wages in violation of sections 202 to 204 by altering time cards and not paying all wages owed for work performed; recovery of civil penalty under section 2699; and unfair business practices under Business and Professions Code 17200 et seq. Subsequently, plaintiffs filed a first amended complaint (FAC) asserting the same basic factual allegations and causes of action.

AutoZone answered the complaint in April 2004.

II. Pretrial Proceedings

In February 2005, after pretrial investigation and discovery during which the parties exchanged

written discovery requests and responses, took the depositions of the plaintiffs and produced nearly 4,000 pages of documents, plaintiffs moved for class certification. Plaintiffs described the proposed class action as being "for wage-and-hour violations related to illegal deductions from bonuses, failure to provide uninterrupted meal and rest periods and failure to pay mileage reimbursements." Plaintiffs asked the court to certify three classes:

Class 1: "Any and all current and former Store Managers who were employed by Autozone at anytime between March 2, 2000 and the present who were paid a bonus that was calculated using a formula which includes deductions for any expenses and losses due to cash shortages, merchandise shortages and shrinkage, workers compensation, tort claims by non-employees, and other losses beyond Plaintiffs' control, and/or not caused by the willful negligence, dishonest act(s) or gross negligence of the employee Plaintiffs."

Class II: "Any and all current and former Store Autozoners who were employed by Autozone at anytime between March 2, 2000 and the present and who were not provided regular, uninterrupted meal and/or rest periods."

Class III. "Any and all current and former Store Autozoners who were employed by Autozone at anytime between March 2, 2000 and the present and who were not provided payment for mileage reimbursements."

Plaintiffs estimated the number of class members in Class I was between 894 and 911 and the number of class members in Classes II and III was approximately 4,900.

Plaintiffs specified their primary theories of liability as: (1) AutoZone's bonus plan allegedly had unlawful criteria; (2) AutoZone's policy and practice of providing excellent customer service allegedly induced some employees to interrupt their meal and rest periods;[2] and (3) employees allegedly failed to seek reimbursement of mileage expenses if they drove their own vehicle to pick up product at another AutoZone store. The motion included 14 exhibits of AutoZone records, AutoZone's responses to interrogatories, excerpts of plaintiffs' depositions, and declarations of 64 class members describing in part interruptions of meals and breaks and the use of their own vehicles.

AutoZone's opposition included declarations from 91 employees allegedly refuting plaintiffs' allegations. The hearing on the motion for certification was set for June 8, 2005.

III. Negotiations

On April 6, the parties engaged in mediation with noted neutral Mark Rudy. After lengthy negotiations which continued over several weeks, the parties reached a settlement. The parties formally notified the court of the settlement on June 6.

IV. The Settlement

A. Basic Terms

The parties filed with the court a joint stipulation of settlement and release (the "Settlement Agreement"), which specifically provided: "It is the intention of the parties that this Stipulation of Settlement shall constitute a full and complete settlement and release of all claims arising from or related to the case against Defendant." The Settlement Agreement also provided, "Claims not released are those not pled in the complaint."

The Settlement Agreement provided: "Counsel for the Settlement Class have conducted a thorough investigation into the facts of this class action and have diligently pursued an investigation of Class members' claims against Defendant. Based on their own independent investigation and evaluation, Class Counsel are of the opinion that the Settlement with Defendant for the consideration and on the terms set forth in this Stipulation of Settlement is fair, reasonable, and adequate and is in the best interest of the Settlement Class in light of all known facts and circumstances, including the risk of significant delay, the risk the Settlement Class will not be certified by the Court, defenses asserted by Defendant, and the numerous potential appellate issues in light of the pending appeal in . . . , and the pending regulations with respect to the meal and rest period statutes, and the legislative history with respect to whether or not the payment for missed meal or rest periods is a wage or a penalty, and whether or not the applicable statute of limitations is one or three years. Defendant and Defendant's counsel agree that the Settlement is in the best interest of judicial efficiency."

The Settlement Agreement listed the common questions of law and fact as: whether or not defendant made improper deductions from bonus payments; whether or not defendant failed to provide all required meal periods, whether or not defendant failed to provide all required rest periods, whether or not the payment for a missed rest break or meal period is a penalty or a wage, whether or not defendant failed to pay employees for all hours worked, whether or not defendant failed to pay employees for time worked "off-the-clock" during interrupted meal periods, whether or not defendant intentionally altered employee timecards so defendant could reach its payroll expense goals, whether defendant failed to timely pay employees all wages due and owing to them, whether or not defendant failed to reimburse employees for the use of their personal vehicles to perform defendant's business, whether or not defendant's business practices affecting class settlement violated Business and Professions Code section 17200 et seq., and whether or not defendant owed employees any penalties under the Labor Code.

The release provision stated:

"20. Upon the final approval by the Court of this Stipulation of Settlement, and except as to such rights or claims as may be created by this Stipulation of Settlement, the Settlement Class and each member of the Class who has not submitted a valid Request for Exclusion Form, fully releases and

discharges Defendant, its present and former parent companies, owners, . . . from any and all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorneys' fees, damages, action or causes of action for, or which relate to, the nonpayment of wages under the Fair Labor Standard Act, the California Labor Code and any other applicable federal, state or local law, penalties under the California Labor Code (including, but not limited to, penalties under Labor Code sections 201, 202, 203, 226, 226.7, 558, 2699 and under Wage Orders 4 and 7 of the Industrial Welfare Commission), claims for missed meal and rest periods, unlawful deductions from any bonus plans, mileage and expense reimbursement, and any other claims alleged in this case, including without limitation all claims for restitution and other equitable relief, liquidated damages, punitive damages, waiting time penalties, penalties of any nature whatsoever, retirement or deferred compensation benefits claimed on account of unpaid overtime, attorneys' fees and costs, from March 2, 2000 up to and including the date of execution of this Settlement Agreement, arising from employment by Defendant within California.

"a. The Settlement Class and each member of the Class who has not submitted a valid Request for Exclusion Form forever agrees that he or she shall not institute, nor accept payment for unpaid wages or back pay, meal and rest penalties, liquidated damages, punitive damages, penalties of any nature, attorneys' fees and costs, or any other relief from any other suit, class or collective action, administrative claim or other claim of any sort or nature whatsoever against Defendant, for any period from March 2, 2000 up to and including the date of execution of this Settlement Agreement, relating to the Claims being settled herein and claims based on the same operative facts as the claims being settled herein, for the time period they were employed by Defendant during the class period."

The settlement class was defined as: "All persons who, at any time from March 2, 2000, to the execution of the Settlement Agreement, are or were employed by Defendant in a non-exempt retail store position in California including, but not limited to, Store Managers, Assistant Store Managers, Parts Sales Managers, Commercial Specialists, Commercial AutoZoners, Diagnostic Specialists, Sales, Senior Sales, Customer Service Representatives, and Drivers."

The Settlement Agreement provided for payment of up to $1 million for dismissal of the action and release of all claims arising from the events alleged in the action. The basic payment components were: (1) approximately $632,500 to eligible class members, distributed pro rata among the members who filed timely claims based on their respective weeks worked; (2) service payments of $3,500 to each plaintiff; (3) administrative fees not to exceed $50,000; and (4) attorney's fees and costs not to exceed $307,000.

B. Preliminary Approval/Notice

At the time of the notice for preliminary approval, the court had sworn statements and deposition testimony from 158 witnesses and company documents relevant to plaintiffs' claims.

After a hearing, the court entered an order for preliminary approval of the Settlement Agreement and made findings to certify a class for settlement purposes. The court reviewed the parties' proposed notice of settlement and ordered that notice be provided by first class mail to each class member.

The notice provided: (1) the nature of the action; (2) the class definition; (3) the total amount and basic terms of the settlement; (4) the procedure and deadline for receiving a share of the settlement; (5) the procedure and deadline for objecting to the settlement; (6) the procedure and deadline for requesting exclusion from the class; (7) the consequences of failing to seek exclusion from the class; (8) why class counsel supported the settlement; (9) the scope of any release; and (10) where to address questions regarding the settlement. The notice specifically stated the release covered claims arising from facts alleged in the case. The settlement administrator certified to the court that it had mailed notices and claim forms to 21,218 class members based on a class member roster and subsequent corrections provided by AutoZone.

The notice stated: "The Action asserts claims against AutoZone for a variety of alleged wage-and-hour violations, including missed and/or interrupted meal and rest periods, unlawful deductions from bonuses, failure to reimburse for mileage expenses, unpaid wages and related alleged unlawful business practices."

C. Class Member Response

According to the application for final approval, 4,534 class members (21.37 percent) submitted timely claims for payment from the settlement fund; 214 class members (1.01 percent) requested exclusion.

Only one allegedly similar action, filed on February 16, 2005, by Carl Myart, was pending against AutoZone before the parties reached their settlement. Myart objected to the settlement without notifying the court of his lawsuit. Myart is not a party on appeal.

Appellants' federal action, which was filed after they received notice of the proposed settlement, does not assert claims pertaining to bonus plans or mileage reimbursement and covers some subjects unrelated to this action. In their objections to the proposed settlement, appellants state they "are pending Plaintiffs and Class Representatives in actions to be filed" in federal court.[3] Appellants describe their federal action as alleging AutoZone engaged in repeated statewide violations of California wage and hours laws, including misclassification of managers as exempt employees, failing to give required meal and rest breaks, failing to pay overtime wages and "off- the-clock" wages, and failing to make timely payments of wages after termination of employment for hourly, non-exempt employees.

Appellants objected to the settlement on the grounds: (1) the settlement amounts were too low; (2) the notice did not specify the precise amount each class member would receive; (3) the notice did not adequately advise class members of their rights; (4) the parties did not provide the court with

sufficient information to assess the merits of the settlement; (5) the notice did not state Rudy (the mediator) endorsed the settlement; (6) the release is overbroad; and (7) the proposed settlement did not address many issues. Appellants did not appear at the fairness hearing, but were represented by counsel.

Most of the evidence presented by appellants, other than their own declarations, was generated in a lawsuit prosecuted by their lawyers against AutoZone in Oregon for violations of Oregon law. The attorneys referred to the experiences of unidentified AutoZone employees in Oregon and, based on their experience in Oregon, made conclusory statements about the valuation of this case, including an estimate for liability due to the misclassification of store managers. The instant complaint does not allege such misclassification. Appellants did not identify any California employees, other than themselves, who actually had missed meal or rest breaks. The purported log of missed meal periods from Oregon was not authenticated, contained no explanation from a percipient witness and did not provide any context of time or scope.

D. Final Approval and Judgment

In written responses, AutoZone and plaintiffs addressed all of the objections. Plaintiffs conceded that based on their investigation and discovery, "the store manager bonus claim is no longer a viable claim" and "the mileage reimbursement claim is minimal." (Emphasis deleted.) Plaintiffs considered the meal and rest break claims to be "the essence" of the settlement.

At the fairness hearing, the court listened to appellants' arguments and took the matter under submission.

On December 13, the court granted final approval of the settlement, finding the Settlement Agreement was "fair and reasonable." Responding to complaints of untimely notice, even though appellant Moreno had submitted a claim form to share in the settlement fund, the court gave appellants another chance to opt out. The court explained the focus of the instant action was the alleged meal and rest period violations and not the misclassification and unpaid overtime claims asserted in appellants' federal action. The court ruled the settlement "satisfied the [Wershba v. Apple Computer, Inc. (2001) 91 Cal.App.4th 224] criteria."

The judgment unconditionally released AutoZone:

"[F]rom any and all claims, liabilities, promises, controversies, damages, actins [sic], causes of action, suits, charges, investigations, demands, costs, losses, debts, and claims for attorney's fees arising under Labor Code §§ 1194 and 510(a)et seq. and Business and Professions Code § 17200, during the Class period as set forth in the Joint Stipulation of Settlement and Release and as set forth in the Notice sent to the class." (Emphasis deleted.)

The judgment also provided:

"Each and every member of the Final Settlement Class and every person acting on his or her behalf (including, but not limited to, attorneys, representatives, and agents of any member of the Final Settlement Class) is hereby permanently and forever barred and enjoined from instituting, directly or indirectly, any action in the California Superior Court, any federal or state court or other tribunal or forum of any kind against Defendant AutoZone, Inc. that asserts any claim for violation of Labor Code §§ 1194 and 510(a)et seq., and Business and Professions Code § 17200 during the Class period." (Emphasis deleted.)

Appellants filed a timely notice of appeal from the judgment.

DISCUSSION

Appellants contend the court abused its discretion when it approved the settlement because it did not carefully review the proposed settlement to determine if the settlement was fair, reasonable, and adequate.[4] Appellants further contend the judgment should be reversed because it released claims for unpaid overtime which were not litigated by the parties and because the notice to class members was flawed in that it did not give accurate notice of the claims being released.

I. The Settlement

"A trial court must approve a class action settlement agreement and may do so only after determining it is fair, adequate, and reasonable. It is vested with a broad discretion in making this determination. In exercising its discretion, that court should consider relevant factors, which may include, but are not limited to the strength of the plaintiffs' case, the risk, expense, complexity and duration of further litigation as a class action, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of class members to the proposed settlement. At the same time, the trial court should give [d]ue regard . . . to what is otherwise a private consensual agreement between the parties. Such regard limits its inquiry to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned. The trial court operates under a presumption of fairness when the settlement is the result of arm's-length negotiation, investigation and discovery that are sufficient to permit counsel and the court to act intelligently, counsel are experienced in similar litigation, and the percentage of objectors is small. Ultimately, the court's determination is simply an amalgam of delicate balancing, gross approximations and rough justice."[5] (In re Microsoft I-V Cases (2006) 135 Cal.App.4th 706, 723; citations & internal quotation marks omitted.)

"Our task is limited to a review of the record to determine whether it discloses a clear abuse of

discretion when the trial court's determination of fairness is challenged on appeal. We do not substitute our notions of fairness for those of the trial court or the parties to the agreement. `To merit reversal, both an abuse of discretion by the trial court must be "clear" and the demonstration of it on appeal "strong."'" (In re Microsoft I-V Cases, supra, 135 Cal.App.4th at p. 723.)

"`To the extent that it appears the trial court's decision was based on improper criteria or rests upon erroneous legal assumptions, these are questions of law warranting our independent review.'" (Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America (2006) 141 Cal.App.4th 46, 60.) We find no indication the court considered improper criteria or made erroneous legal assumptions.

"[P]re-certification settlements are routinely approved if found to be fair and reasonable." (Wershba v. Apple Computer, Inc., supra, 91 Cal.App.4th at p. 240.) Furthermore, voluntary conciliation and settlement are the preferred means of dispute resolution especially in complex class action litigation. (7-Eleven Owners for Fair Franchising v. Southland Corp. (2000) 85 Cal.App.4th 1135, 1151.)

Appellants attack the settlement arguing the court did not discuss the factors for determining if a settlement is fair, adequate and reasonable. Appellants suggest that the court just looked at the objections without considering the merits of the objections and that by telling the objectors to opt out, the court did not fulfill its obligation to protect absent class members. In particular, appellants assert the court did not look at the increase in the class size (from an estimated 5,000 for class certification to sending 22,000 notices), the action settled only six months after defendant answered the FAC, and insufficient information was provided to the court in that there was inadequate discovery as plaintiffs' attorneys spent only "dozens" of hours on the case and had not taken the depositions of any executives or other personnel who might have helped reveal the true extent of defendant's liability. In addition, appellants claim they provided evidence showing plaintiffs' investigation was inadequate based on the prosecution by appellants' counsel of a case against defendant in Oregon in which deponents testified about defendant's violations of California's wage and hour laws and described documents that would have been relevant to plaintiffs' claims. Appellants assert the case law on which plaintiffs' counsel based their valuation of the meal and rest break claims is no longer good law, review having been granted. Finally, appellants complain the court did not consider how a Private Attorneys General Act (PAGA) (§ 2698 et seq.) claim might impact the action.

Appellants inappropriately raise the issue of the PAGA claim for the first time in their reply brief. (See 9 Witkin, Cal. Procedure (4th ed. 1997) Appeal, § 616, pp. 647-648 ["[T]he rule is that points raised in the reply brief for the first time will not be considered, unless good reason is shown for failure to present them before." (Emphasis deleted.)].) Moreover, this claim was not raised in the trial court. Accordingly, it is waived. (See Wershba v. Apple Computer, Inc., supra, 91 Cal.App.4th at p. 237 ["[T]o the extent that the objectors raise an entirely new theory here, which was not considered by the court below, we will not entertain such an issue for the first time on appeal."].)

Even though one of plaintiffs' attorneys referred to spending "dozens of hours" in their application for preliminary approval, the record shows plaintiffs' attorneys spent 688 hours on the case. According to plaintiffs, the relevant inquiry is the weeks worked not the number of claimants in the class. (See § 226.7.) Appellants estimated the average award would be only $30 based on the potential class of 22,000, but only 4,534 members submitted timely claims. By stating the action settled six months after defendant answered the FAC, appellants imply that time was too short for a proper investigation to have taken place. However, defendant answered the complaint one year prior to the settlement.

Not only is appellants' argument about inadequate discovery based on their experience in Oregon, but also plaintiffs' counsel had conducted other discovery in California. Reference to the discovery in the Oregon case was little more than an attempt to have the court conduct a trial on the merits of plaintiffs' action. (See 7-Eleven Owners for Fair Franchising v. Southland Corp., supra, 85 Cal.App.4th at p. 1145 ["`Neither the trial court nor this court is to reach any ultimate conclusions on the contested issues of fact and law which underlie the merits of the dispute, for it is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements.' In other words, `the settlement or fairness hearing is not to be turned into a trial or rehearsal for trial on the merits.'" (Citation omitted.)].)

Appellants repeatedly complain they proferred evidence showing that if plaintiffs' counsel had conducted adequate discovery, the true extent of defendant's violations of the law would have been revealed, which in turn would have affected the strength of plaintiffs' case for the purpose of evaluating any settlement. In appellants' opinion the class members' losses greatly exceeded the proposed settlement values; an opinion based on their counsel's estimated value of the average claim in Oregon; a case involving more types of claims than asserted in the instant case and for alleged violations of Oregon law.

The strength of a case is but one of many factors to be considered. "In the context of a settlement agreement, the test is not the maximum amount plaintiffs might have obtained at trial on the complaint, but rather whether the settlement was reasonable under all of the circumstances." (Wershba v. Apple Computer, Inc., supra, 91 Cal.App.4th at p. 250.) "`The fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean the proposed settlement is grossly inadequate and should be disapproved.'" (Linney v. Cellular Alaska Partnership (9th Cir. 1998) 151 F.3d 1234, 1242.) Settlements have been found fair and reasonable even though the monetary relief was "relatively paltry." (Rebeny v. Wells Fargo Bank (1990) 220 Cal.App.3d 1117, 1139.)

Appellants argue that because the law is unsettled as to which statute of limitations applies to the claims for meals and rest breaks and the state supreme court granted review of cases addressing that issue, the premise upon which the superior court based its conclusion regarding the strength of plaintiffs' claim was unreliable. That factor can just as easily be seen as a factor in favor of settlement.

In Wershba v. Apple Computer, Inc., supra, 91 Cal.App.4th at pages 244-245, the court set out the factors for determining when a settlement is fair, reasonable and adequate and the factors for when a settlement is entitled to a presumption of fairness. The Settlement Agreement and plaintiffs' application for final approval detailed why the Settlement Agreement was entitled to a presumption of fairness. Although the court did not discuss those factors in its order, it specifically stated the settlement satisfied the Wershba criteria. Most of the court's order addressed the objections and responses to the objections because that was the issue before the court as the court had already made a preliminary determination the settlement was fair.

We disagree with appellants that the court limited its analysis to stating objectors could opt out; that was a remedy proposed by the court in response to the appellants' complaint of untimely notice. Even though the class had not been certified at the time of the settlement, there were voluminous pleadings filed in support of and in opposition to the settlement. (See Dunk v. Ford Motor Co., supra, 48 Cal.App.4th at p. 1803 & p. 1803, fn. 9.) Accordingly, based on our review of the record, we conclude it is clear that the court read all the documents filed by parties, took the matter under submission and made a reasoned decision about fairness of the settlement.

We conclude appellants' objections to the settlement are without merit, especially as approving a class action settlement is a matter of delicate balancing, gross approximations, and rough justice. Moreover, we note appellants do not claim or point to any evidence of fraud, overreaching or collusion on the part of plaintiffs and defendant.

The Settlement Agreement was the result of arm's length negotiations which lasted several weeks and which initially occurred before a neutral mediator. (See D'Amato v. Deutsche Bank (2d Cir. 2001) 236 F.3d 78, 85 [The participation of a neutral mediator "helps to ensure that the proceedings were free of collusion and undue pressure."].) Plaintiffs' counsel and defense counsel detailed their experience in similar litigation. (See National Rural Telecommunications Cooperative v. DirecTV, Inc. (C.D. Cal. 2004) 221 F.R.D. 523, 528 ["`Great weight' is accorded to the recommendation of counsel, who are most closely acquainted with the facts of the underlying litigation. This is because `[p]arties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in the litigation.'" (Citation omitted.)].) The discovery was described in detail and was sufficient to enable counsel and the court to act intelligently. Finally, the percent of objectors was very small (3 out of a possible class of 21,218, less than one-tenth of a percent). (See id., at p. 529 ["It is established that the absence of a large number of objections to a proposed class action settlement raises a strong presumption that the terms of a proposed class action settlement are favorable to the class members."].) Thus, the court did not abuse its discretion when it approved of the settlement.

Lastly, appellants contend the Settlement Agreement was all encompassing, including releasing claims for lost wages, and did not limit the release to claims for the failure to provide meal and rest period breaks. The Settlement Agreement provided it was limited to claims pled and specifically

stated, "Claims not released are those not pled in the complaint."

II. The Judgment

Appellants contend the judgment should be reversed because it released claims that were not pled and did not release claims that were pled. Appellants argue the judgment broadened the class as it released claims for overtime and unpaid wages, meaning the court did not determine if the class was properly certified with respect to those claims. (See Trotsky v. Los Angeles Fed. Sav. & Loan Assn. (1975) 48 Cal.App.3d 134, 146-147.) Moreover, appellants complain the notice was inadequate as it did not inform the class members of all the claims being released. Appellants posit the notice was adequate with respect to the claims in the complaint, but not with respect to the claims released by the judgment because those claims were broader and different from those described in the notice as they included overtime claims.

A. The Notice

"[T]he `notice given to the class must fairly apprise the class members of the terms of the proposed compromise and of the options open to dissenting class members.' The purpose of a class notice in the context of a settlement is to give class members sufficient information to decide whether they should accept the benefits offered, opt out and pursue their own remedies, or object to the settlement. As a general rule, class notice must strike a balance between thoroughness and the need to avoid unduly complicating the content of the notice and confusing class members. Here again the trial court has broad discretion." (Citations omitted.) (Wershba v. Apple Computer, Inc., supra, 91 Cal.App.4th at pp. 251-252.)

In particular, appellants complain the notice failed to inform the class of appellants' federal action, which would have affected class members' decisions on whether or not to opt out, and of the members' right to be represented by independent counsel. Appellants' federal action had not been filed at the time the notices were sent out. Appellants did not object to the failure to inform the class of a right to be represented by independent counsel and cite no authority requiring that notice. At the time the notices were sent, California Rules of Court, former rule 1856(d)(5) provided the notice must include: "A statement that any member who does not request exclusion may, if the member so desires, enter an appearance through counsel." The notices included a statement: "As a Class Member, you may enter a legal appearance individually or through your own counsel at you own expense. Otherwise, Class Counsel will represent your rights at no separate expense to you." Thus, notice of the right to independent counsel was provided. We address the issue of what claims were released below.

B. The Judgment

"Any attempt to include in a class settlement terms which are outside the scope of the operative

complaint should be closely scrutinized by the trial court to determine if the plaintiff genuinely contests those issues and adequately represents the class." (Trotsky v. Los Angeles Fed. Sav. & Loan Assn., supra, 48 Cal.App.3d at p. 148.) The Trotsky court noted that although a court has the power to approve the inclusion of additional claims in the settlement, broad releases should be avoided. (Ibid.) When a class is certified for settlement purposes, heightened attention by the court is needed to protect absentee members from unwarranted or overbroad class definitions. (Amchem Products, Inc. v. Windsor (1997) 521 U.S. 591, 620.)

Plaintiffs' action was for illegal deductions from bonuses, the failure to provide uninterrupted meal and rest periods and the failure to pay mileage reimbursements. In response to objections to the settlement, plaintiffs conceded the store manager claim was no longer a viable claim, the mileage claim was minimal, and the meal and rest break claims were "the essence" of the settlement. Plaintiffs and defendant agree the FAC did not assert overtime claims.

In its order, the court stated appellants did not need to be concerned about the res judicata effect of the Settlement Agreement because it did not release the overtime claims asserted in their federal action. However, the judgment entered by the court seems to contradict that statement as it refers to the release of claims under sections 1194 and 510, which respectively give an employee a cause of action if not paid overtime and define how overtime is calculated. In addition, the judgment does not refer to the release of claims under the code sections cited in the complaint and Settlement Agreement.

Accordingly, we will remand the matter for the court to enter a judgment which conforms to the Settlement Agreement and notices by listing those claims, such as overtime, not covered by the Settlement Agreement. If the judgment is corrected, the notices will have correctly reflected the claims to be released by the Settlement Agreement.

DISPOSITION

The judgment is reversed and remanded with directions for the superior court to enter a judgment in conformity with the Settlement Agreement consistent with the views expressed herein. The order approving the Settlement Agreement is affirmed. Appellants to recover costs on appeal.

We concur: JOHNSON, Acting P.J., ZELON, J.

1. Unless otherwise noted, all statutory references are to the Labor Code.

2. AutoZone had a customer service policy called "Drop/Stop- 30/30" that required employees to drop what was in their hands and stop what they were doing to greet a customer before the customer had gone 30 feet from the store entrance or been in the store for 30 seconds.

3. In their brief, appellants state this action was filed on November 1, 2005. There is no copy of appellants' federal complaint in the appellate record.

4. Plaintiffs' contention that appellants lack standing because they are not parties of record is without merit. "A class member who appears at a fairness hearing and objects to a settlement affecting that class member has standing to appeal an adverse decision notwithstanding the fact that the member did not formally intervene in the action." (Consumer Cause, Inc. v. Mrs. Gooch's Natural Food Markets, Inc. (2005) 127 Cal.App.4th 387, 395.)

5. "In the absence of California law on the subject, California courts look to federal authority." (Dunk v. Ford Motor Co. (1996) 48 Cal.App.4th 1794, 1801, fn. 7.)