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Judge Won't Allow 'Bonanza' Settlement

Matthew Hirsch
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U.S. District Judge William Alsup blasted a proposed class action settlement last week for giving plaintiff attorneys up to \$2.25 million in fees while leaving former Oracle Corp. employees with "dimes on the dollar" for unpaid overtime claims.

In his June 19 order, the Northern District judge said the \$9 million deal amounted to a "collusive settlement" and a "bonanza" for Oracle, the plaintiff lawyers and the name plaintiffs. The plaintiffs are represented by San Francisco's Schneider & Wallace and Santa Barbara solo Christina Djernaes; Oracle is represented by Paul, Hastings, Janofsky & Walker.

Attorneys on both sides now have to pick up the pieces — fast. The parties had tried to settle the case before a class was certified; now, if they can't get a new settlement approved on July 5, they'll have to get ready for an Aug. 2 certification hearing.

Even wage-and-hour attorneys who were not involved in the Oracle deal have been poring over [Alsup's ruling](#), which criticized certain aspects of class action settlements that some lawyers consider commonplace.

"It's a wake-up call," said Steven Tindall, a plaintiff's attorney at the San Francisco employment boutique Rukin Hyland Doria & Tindall. "We believe other judges are going to look at opinions such as this and may have the same questions."

The Oracle suit was filed last year on be-half of a California class of former "sales consultants" who alleged they were misclassified and missed out on overtime pay. But Alsup noted, with some concern, that the proposed settlement was much larger in scope — it would have covered a na-tionwide class of about 1,500 people who used to work for Oracle.

One of Alsup's main objections was a provision that would have released the company from a host of future wage-and-hour claims — not just those mentioned in the complaint — unless class members moved to opt out of the settlement.

Though Alsup noted some disagreement between the two sides about the true scope of the release, he said the settlement language indicated it would cover claims based on about 150 laws in 35 states.

During a preliminary approval hearing, the lawyers "tried to put a softer spin on the release," Alsup said in his ruling.

"But we must be guided by the actual written agreement and release, for that is the instrument that will be interposed by Oracle in various other courts across the country to bar workers' claims," he wrote.

Schneider & Wallace's Todd Schneider, the lead plaintiffs' attorney, wouldn't say which side came up with the release language, citing an agreement between lawyers not to discuss specifics of the case in public.

But "one of the lessons I take from the opinion," Schneider said, "is that in class actions the release language needs to be very narrowly tailored to only the specific claims brought in the case." Schneider said he and Djernaes have had further discussions with Oracle since Alsup's decision.

One of Oracle's attorneys, Paul, Hastings partner Nancy Abell, declined through her secretary to comment on the

case.

In his 17-page ruling, the judge said the lawyers would have a better shot at approval if their proposal would only release Oracle from future claims brought by class members who take the affirmative step of opting in to the settlement.

But Alsup had several other problems with the proposed settlement. He called the deal "unfair" for the vast majority of class members, noting that a damages assessment submitted by the plaintiffs' attorneys had valued the case at up to \$52.7 million. In addition, the three named plaintiffs were to split \$45,000 in incentive payments, and any unclaimed funds were slated to revert to Oracle.

"Virtually none of the foregoing problems were raised by counsel," Alsup noted, "illustrating the sad fact that once a collusive settlement is reached, counsel have no incentive to critique their joint proposal."

"It is also no answer to say that a private mediator helped frame the proposal," Alsup wrote, adding that mediators — unlike plaintiff attorneys — don't owe a fiduciary duty to anyone. "It matters little to the mediator whether a deal is collusive as long as a deal is reached."

Mediator David Rotman worked on the initial Oracle settlement, but no mediator is involved in the latest talks, according to Schneider.

E-mail discussions of the ruling started filtering through the labor and employment bar soon after it was posted on the docket.

Defense attorney James Severson, who forwarded it around to his partners at Bingham McCutchen, called it "a must-read" for wage-and-hour class action attorneys.

"It's a very important opinion that we're all going to have to look very closely at. It's going to instruct how we review settlement proposals," added Barry Goldstein, of counsel at Goldstein, Demchak, Baller, Borgen & Dardarian.

Tindall, the Rukin Hyland partner, said Alsup's order might draw more attention to deals that let defendants keep any leftover money after all claims get paid, known as claims-made settlements.

"The reason this is such an interesting case is that it wasn't that unusual a settlement, and a judge took a very negative view toward it," he said, noting that he generally doesn't agree to such deals.

Schneider said he had entered very few claims-made settlements before the Oracle deal. And Alsup's ruling "has really strengthened my view that claims-made settlements should always be the exception, not the rule," he added.