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## Settlement of Individual Claims Did Not Moot Class Representative's Appeal in Class Action

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*The Ninth Circuit Court of Appeals, in Narouz v. Charter Communications, LLC, held that a class representative who voluntarily settled his individual claims but retained a “personal stake” in the class representation retained the right to continue in representative capacity and appeal the denial of a motion for class certification.*

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The Ninth Circuit Court of Appeals, in *Narouz v. Charter Communications, LLC, et al.*, --- F.3d ---, 2010 WL 143700 (9th Cir.), answered a question left open by both the Ninth Circuit in *Seidman v. City of Beverly Hills*, 785 F.2d 1447, 1448 (9th Cir. 1986), and the U.S. Supreme Court in *U.S. Parole Comm'n v. Geraghty*, 445 U.S. 388, 404 n.10 (1980): whether a class representative who voluntarily settled individual claims that were part of a putative class action could nevertheless continue in a representative capacity on behalf of the class. Looking to *Geraghty* and *Deposit Guaranty National Bank, Jackson Mississippi v. Roper*, 445 U.S. 326, 334 n.6 (1980), the Ninth Circuit held that the class representative retained his ability to appeal the denial of class certification if he, as part of the settlement of his individual claims, retained a “personal stake” in the class representation. According to the Ninth Circuit, in order to retain such a “personal stake,” the class representative cannot have released “any and all interests he or she may have had in class representation through a private settlement agreement.” The Ninth Circuit determined that “[b]y specifically stating in the [settlement] agreement that the \$60,000 was payment for claims ‘aside from those related to Narouz’s class allegation,’” and by maintaining an interest in the receipt of an additional \$20,000 payment that was conditioned on the court’s approval of the class settlement, Narouz “maintained a personal stake” as required by *Geraghty*.

The *Narouz* plaintiff filed a class action alleging violations of the California Labor Code and Business & Professions Code §§ 17200, *et seq.*, on behalf of a putative class of defendant Charter Communications, LLC’s (“Charter”) nonexempt employees. The complaint also alleged an individual wrongful termination claim solely on Narouz’s behalf. Through mediation, the parties agreed to general settlement terms. The settlement included a “Class Action Joint Stipulation of Settlement” providing for a gross payment by Charter including attorney fees (“Class Settlement”) and a separate “Confidential Settlement Agreement and Release” between Charter and Narouz, which called for Narouz to be paid \$60,000 for the release of his wrongful termination claim, claims for any unpaid wages and for any emotional distress, pain and suffering, and penalties “aside from those related to Narouz’s class allegation” (the “Individual Settlement”).

Narouz was also eligible to receive payment of an additional \$20,000 conditioned on the district court's final approval of the Class Settlement.

In February 2007, Narouz signed the Individual Settlement, and thereafter filed a motion seeking certification of the class for settlement purposes only and preliminary approval of the Class Settlement. At the May hearing, the District Court refused to certify the case as a class action for settlement purposes or approve the Class Settlement, its order stated only that it could not "ascertain a class." The day after Narouz filed a request for dismissal with prejudice as to his individual claims, the district court entered an order terminating the case. Narouz appealed.

After concluding that by specifically including in the settlement that the \$60,000 payment was for claims "aside from those related to Narouz's class allegation" and that Narouz would be paid an additional \$20,000 conditioned upon the court's approval of the class settlement, Narouz maintained a personal stake in the class representation, the Ninth Circuit vacated the district court's denial of the motion for certification of settlement class and for preliminary approval of the Class Settlement. It remanded the case to a different District Court judge for reconsideration.

Accordingly, when a matter is pending before a U.S. District Court in California or elsewhere in the 9<sup>th</sup> Circuit, if the parties intend for a class representative to release individual claims as well as interests in the class representation through a private settlement, the settlement agreement must expressly state that the class representative is relinquishing any and all claims of any kind or nature whatsoever that it has or may have individually and any claims that it has or may have as a member and/or class representative of the putative class, including any and all claims for attorney's fees, costs or compensation. This may provide an attractive avenue for settlement of putative class actions in federal court<sup>1</sup> if it is unlikely that another class representative will emerge to continue the matter.

If you have any questions about the content of this advisory or having a voice on this issue, please contact the Pillsbury attorney with whom you regularly work, or the authors of this advisory

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<sup>1</sup> The complaint was filed in Los Angeles Superior Court and later removed to the U.S. District Court, Central District of California.