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The preclusive effect of class-action releases on future wage and hour claims

A legitimate class-action claim for unreimbursed uniform expenses may be barred before it begins — not on the merits, but due to overly broad release language in a prior, unrelated class-action settlement — underscoring the critical importance of carefully crafting settlement terms and understanding the limits of the "identical factual predicate" doctrine.

By Allison Eckstrom

Consider the following hypothetical: A worker files a wage and hour class-action claim against her employer, alleging that the company failed to reimburse its employees for uniform expenses. Under Labor Code Section 2802, employers are required to indemnify "all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties." An employer's failure to reimburse employees for personal expenditures associated with mandatory uniforms violates Section 2802.

But instead of recouping the expenses they incurred, the plaintiff and putative class members are sent home empty-handed. The company avoids liability under Section 2802, potential penalties, and attorneys' fees and costs without even a slap on the wrist. How could this be?

It turns out that the employer previously settled a class-action lawsuit, which involved alleged violations under Section 2802 based on the failure to reimburse employees for business-related cell-phone expenses. That earlier settlement included a release so broad that, according to the court in the subsequent proceeding, it precluded the new putative class from pursuing its uniform expense claim.

It may not seem fair, but legitimate claims may end up "dead on arrival" based on court-approved release language in a prior class-action settlement. It all comes down to how the parties to the prior lawsuit crafted the language of the settlement release.

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Class-action settlements

The parties to the first class-action settlement (dealing with cell-phone charges) negotiated a broad release of claims. Specifically, the release covered "all claims alleged in the complaint, as well as any claims that could have been alleged based on the operative facts in the complaint." The release expressly included claims under Labor Code Section 2802 but provided no specific details about the type of expenses at issue for purposes of the release.

Class-action settlements typically include provisions intended to ensure the finality of claims while also protecting absent class members' interests. The parties to a class action settlement commonly negotiate broad releases to maximize the bargained-for exchange. A broad release affords the defendant-employer protection against future litigation involving the same or similar claims and supports the monetary recovery on behalf of the settlement class. Indeed, such class-wide releases often cover not only the claims currently at issue in the litigation but also other claims that were not presented to the court.

However, when the release is drafted so broadly that it potentially deprives absent parties of their right to seek redress in the future for claims wholly unrelated to the settlement, the courts in subsequent proceedings are charged with carefully scrutinizing the preclusive effect of the release.

The "identical factual predicate" doctrine

In the landmark case of *Hesse v. Sprint Corp.* (598 F.3d 581 (9th Cir. 2010)), the 9th Circuit explained that "[a] settlement agreement may preclude a party from bringing a related claim in the future 'even though the claim was not presented and might not have been presentable in the class action,' but only where the released claim is 'based on the identical factual predicate as that underlying the claims in the settled class action.'" (*Hesse*, supra at pg. 590, citing *Williams v. Boeing Co.*, 517 F.3d 1120, 1133 (9th Cir. 2008)).

The "identical factual predicate" doctrine has been adopted by a majority of federal circuits, as well as the California state courts. Intended to curtail the preclusive scope of broadly worded class-action settlements, the doctrine provides that earlier releases should only apply to future claims that share an "identical factual predicate" with the settled claims. What does this mean?

Federal courts generally have held that the doctrine requires only "a common nucleus of operative facts." To release claims that were "not presented and might not have been presentable," the later claims

must share that common nucleus with the claims in the earlier class litigation. Without such a requirement, there might be no limit on the types of claims that could be released.

Most federal courts have relied on the case of *TBK Partners, Ltd. v. Western Union Corp.* (675 F.2d 456 (2d Cir. 1982) when determining how closely the facts underlying separate claims must align. The 2nd Circuit in *TBK* ruled that a settlement judgment's release of unpleaded state claims had a preclusive effect on later claims because the same facts were "at the core" of both the unpleaded state and pleaded federal claims. Had the judgment been based on an adjudication rather than a settlement of the federal claims, the court noted, the unpleaded state claims would have been issue-precluded because they turned on the "very same set of facts."

"We therefore conclude that in order to achieve a comprehensive settlement that would prevent relitigation of settled questions at the core of a class action, a court may permit the release of a claim based on the identical factual predicate as that underlying the claims in the settled class action even though the claim was not presented and might not have been presentable in the class action." (*TBK*, supra at pg. 460.)

In a later case, the 9th Circuit distinguished the "identical factual predicate" test from the "same transaction" test used in collateral estoppel decisions. In *Epstein v. MCA, Inc.* (50 F.3d 644, 664-65 (9th Cir. 1995)), the court held that claims can arise "out of the same transaction, [but be] based upon different underlying facts." Without an identical factual predicate, the earlier release cannot bar a later claim arising out of the same transaction but involving different facts.

Application in the wage and hour context

In the earlier hypothetical, the first claim involved failure to reimburse for cell-phone charges; the second alleged unreimbursed uniform expenses. Both involved Labor Code Section 2802, but they dealt with different expenses. Do they share an identical factual predicate?

When examining Labor Code violations, courts have grappled with this question. In the 2018 case of *Shine v Williams-Sonoma, Inc.* (23 Cal.App.5th 1070 (Cal. App. 2018), a California appeals court held that an earlier class-action settlement precluded a later wage and hour claim by the same putative class of hourly employees of Williams Sonoma.

In the earlier proceeding (*Morales v. Williams-Sonoma, Inc.*), the putative class sought recovery of unpaid wages and penalties during the class period dating back to June 24, 2009. The specific wage and hour allegations included, among other things, failure to provide meal and rest periods and failure to pay overtime and minimum wages. The later class-action sought to recover unpaid reporting-time pay for on-call shifts worked by the putative class during part of the period covered by the *Morales* settlement agreement.

The appellate court concluded that, because reporting-time pay is a form of wages, a claim for reporting-time pay could have been raised in the *Morales* action and, therefore, was precluded in the *Shine* case. In reaching its decision, the court cited *Villacres v. ABM Industries Inc.* for the proposition that "[c]ollateral estoppel precludes the litigation of a claim that was related to the subject matter of the first action and could have been raised in that action, even though it was not expressly pleaded." (189 Cal.App.4th 562, 576 (2010), citing *Interinsurance Exchange of the Auto. Club v. Superior Court* (1989) 209 Cal.App.3d 177, 181-182.) The court in Shine reasoned that the "fact that no claim for reporting-time pay was alleged in Morales does not alter our determination that the same primary right, to seek payment of wages due, was involved in both *Morales* and this case." (*Shine*, supra at pg. 1077)

In 2021, in *Amaro v. Anaheim Arena Management LLC* (69 Cal. App. 5th 521 (2021)), a different appeals court held that the class-wide release in a prior wage and hour settlement was overly broad and could not bar the plaintiff in the subsequent proceeding from pursuing her claims. Citing *Villacres*, the *Amaro* court noted that, if appropriate, a court could release not only those claims alleged in the complaint and before the court but also those that "could have been alleged by reason of or in connection with any matter or fact set forth or referred to in" the complaint. The opinion then clarified that "[w]hile these statements do not expressly address the limits of a class release, they contain an implicit boundary: a court cannot release claims that are outside the scope of the allegations of the complaint."

The Court of Appeal in *Amaro* determined that the release in the prior settlement "extends past this boundary." The court noted that the allegations in the prior class action involved the employer's timekeeping system, unpaid time spent waiting in line, missed meal and rest periods, and reimbursement for work related expenses and that, by extending to claims that "in any way" relate to the allegations in the complaint, "the release ensnares claims outside the scope of Amaro's complaint."

By way of example, the court explained that, as phrased, the prior settlement release could extend impermissibly to an individual retaliation claim based on complaints about meal and rest break violations, even though liability for retaliation would not require adjudication of whether the employer actually violated the meal or rest break laws. This hypothetical retaliation claim would not be based "on the same factual predicate as Amaro's complaint," insofar as the "crux of the claim – retaliation – is completely absent from the pleading" and could not be "inferred from the complaint's allegations."

In a more recent case, a federal court affirmed the broad scope of an earlier class-action settlement involving alleged wage and hour violations. Specifically, the district court in *Tirado v. Victoria's Secret Stores, LLC*, 2025 WL 859878 (E.D. Cal. 2025) granted the retail store's motion for judgment on the pleadings in a proposed class action filed on behalf of more than 30,000 current and former California employees who were not paid for mandatory pre-shift COVID-19 screenings.

The earlier settlement release had addressed pre-shift off-the-clock work but did not include COVID screenings. Even though the release did not specifically reference COVID temperature checks, the court said it met the requirements of the "identical factual predicate" doctrine governing class releases in the 9th Circuit and that it was sufficiently circumscribed to cover the later claims.

The fundamental issue was "whether factual allegations that were not asserted specifically within a previous complaint were released because those allegations fit within a broader category of released claims in an otherwise unobjectionable settlement agreement." Unlike *Amaro*, where the court concluded that a prior release purporting to encompass claims that "in any way" related to the operative pleading was overbroad, the court in *Tirado* concluded that the release of unpaid wages based on pre-shift work broadly encompassed other off-the-clock theories of liability. In other words, both class action proceedings in-volved allegations of unpaid off-the-clock work, albeit different types (i.e., the former proceeding involved pre-shift work and the allegations in *Tirado* involved COVID screenings), and, therefore, involved the same factual predicate such that the prior release barred Tirado's claims as a matter of law.

No bright-line rule

The decisions in *Shine*, *Amaro*, and *Tirado* highlight the fact-specific nature of the "identical factual predicate" doctrine. Indeed, other court decisions in the wage and hour context reaffirm that the analysis is often nuanced and does not involve a bright-line rule. (*See e.g., Chavez v. PVH Corp.*, 2015 WL 581382 (N.D. Cal. 2/11/15) (denying final approval of a class settlement after the parties confirmed their intent that the release of waiting-time penalties under Labor Code Section 203 extended not only to the payroll debit card claim alleged in the lawsuit but also to other claims asserted in separately pending class actions against the same defendant-employer for meal and rest break violations, unpaid wages, etc.); *Raquedan v. Volume Services, Inc.*, 2018 WL 3753505 (N.D. Cal. 08/08/2018) (prior wage and hour class settlement did not release claims on behalf of identical putative class for alleged disclosure violations under the Consumer Credit Reporting Agencies Act); *Nangle v. Penske Logistics, LLC*, 2012 WL 12996852 (S.D. Cal. 10/30/2012) (concluding that prior class claims arising from employer's "use it or lose it" vacation policy did not involve identical factual predicate as the current class claims for unpaid overtime wages and unpaid meal and rest break premiums); *Anderson v. Nextel Retail Stores, LLC*, 2010 WL 8591002 (C.D. Cal. 4/12/2010) (finding that commission-based language in a prior settlement release was sufficiently factually related to the facts in subsequent complaint that alleged unlawful "chargebacks to [ ] wages" without expressly referencing "commissions").)

Given the decisional landscape, it is unclear how the courts would

rule in the hypothetical business expense case. A court could find a sufficiently identical factual predicate based on the fact that uniforms are just one type of business expense, similar to the courts' findings in *Shine* (reporting time pay claim is a form of unpaid wage claim and, therefore, deemed released as part of prior unpaid wage settlement) and *Tirado* (claim for COVID screening deemed released as part of prior off-the-clock settlement for pre-shift work). Equally plausible, a court could deem the allegations only "superficially identical," similar to several courts' conclusion that unpaid vacation claims were insufficiently similar to unpaid overtime and minimum wage claims for purposes of barring future claims in court. Notably, at least two federal district courts in California denied preliminary approval of expense reimbursement class settlements where the release purported to waive claims under Section 2802 beyond the specific types of expenses alleged in the operative pleading. (*See, e.g., Christensen et al. v. Hillyard, Inc.*, 2014 WL 3749523 (N.D. Cal. July 30, 2014) (denying preliminary approval of class settlement based on overly broad release under Section 2802 that encompassed claims for failure to reimburse expenses or unlawful deductions wholly unrelated to those at issue in the litigation); *Stokes v. Interline Brands, Inc.*, 2014 WL 5826335 (N.D. Cal. November 10, 2014) (denying preliminary approval of class settlement, on the grounds that the proposed release "goes far beyond" the "discrete claims" for failure to reimburse for mileage and cell phone use and to account for business expense deductions on wage statements and instead encompassing "any and all claims for . . . any type of reimbursement claim, and any type of inaccurate wage statement claim–even if totally unrelated to the specific allegations made by plaintiff").)

Conclusion

The identical factual predicate inquiry is fact-based. Although some courts have ruled that later cases are precluded if sufficiently related to earlier class actions, others have required that cases be factually identical for preclusion to apply. According to the *Shine* court, "[a]s with any contract, the language of a settlement agreement must be viewed in its entirety, and, if possible, every provision must be given effect." (Citing *City of El Cajon v. El Cajon Police Officers' Assn.* (1996) 49 Cal.App.4th 64, 71.)

Until there is more definitive guidance, practitioners must draft class-action settlement releases carefully and with clear intention.

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