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## Francesca's Store Managers Win Conditional Cert. In OT Row

By **Bill Wichert**

Law360 (November 6, 2018, 8:59 PM EST) -- A New Jersey federal judge on Tuesday granted conditional certification to a class of current and former store managers at Francesca's in a suit alleging the clothing store chain misclassified them as exempt from federal and state overtime pay requirements.

U.S. District Judge Robert B. Kugler granted the certification bid from the managers in their complaint against Francesca's Holdings Corp. and Francesca's Collections Inc., saying they have presented "far more than a modest factual showing that the proposed opt-in class members are substantially similar."

"Indeed, courts in this district have discharged a plaintiff's modest burden at this first stage of conditional certification based on similar showings," Judge Kugler said in his written opinion.

In meeting that burden, the managers presented various pieces of evidence, including corporate documents and deposition testimony from corporate representatives and named and opt-in plaintiffs, the judge said.

That evidence indicates that all of Francesca's store managers are classified as exempt and that they have similar duties, the same job description, and "the same compensation structure regardless of store location, size, volume of store, or experience," the judge said.

"Collectively, plaintiffs present evidence that shows these employees had the same job responsibilities and were denied overtime pay for the excess hours worked," Judge Kugler said.

The class conditionally certified by the judge consists of all individuals who currently work or previously worked for the chain as "boutique team leaders" or "boutique managers" in the U.S. on or after Jan. 27, 2014, and who were classified as exempt and not paid overtime for each hour worked beyond 40 hours in a work week.

Named plaintiffs Meghan Magee, Samantha Bailey and Robert Bloominger Jr. filed the suit on Jan. 27, 2017, as a collective action pursuant to the Fair Labor Standards Act and as a class action pursuant to analogous state laws in New Jersey, Illinois and Pennsylvania, the three states where they collectively worked as store managers, according to the opinion.

Magee, Bailey, Bloominger and nine opt-in plaintiffs have alleged that Francesca's, which operates more than 600 stores across the country, "pursued a centralized, company-wide policy or practice" that classified store managers as exempt from the overtime rules set forth in the FLSA and the state laws, the opinion said.

The managers further alleged that the company "purposefully underfunded store labor budgets to avoid paying overtime compensation to store managers for performing non-exempt duties over the forty-hour workweek," the opinion said.

Those duties performed by store managers — which included working the cash registers, helping customers and stocking shelves — "did not materially differ from the duties of non-exempt hourly

paid employees," the managers asserted, according to the opinion.

"Plaintiffs also argue that defendants misclassified these employees as exempt and failed to pay them overtime compensation for hours worked in excess of forty (40) per week," the opinion said.

In opposing the workers' conditional certification motion, Francesca's argued in part that "the primary responsibilities of the potential class differed in ways that show they are not substantially similar," the opinion said.

But Judge Kugler rejected that argument, saying the company failed to "refute the overwhelming evidence that the job duties themselves did not vary and the general policy that store managers shared job titles and worked overtime hours without additional compensation."

"Again, this court finds defendants['] main challenges to be merits challenges that are inappropriate at this stage of conditional certification," the judge said.

Counsel for the managers could not immediately be reached for comment Tuesday. Counsel for Francesca's was not immediately able to comment Tuesday.

The managers are represented by Marc S. Hepworth, Charles Gershbaum, David A. Roth and Rebecca S. Predovan of Hepworth Gershbaum & Roth PLLC, and Gregg I. Shavitz, Paolo C. Meireles and Michael Palitz of Shavitz Law Group PA.

Francesca's is represented by Harris S. Freier, Rajiv D. Parikh and Kathleen Barnett Einhorn of Genova Burns LLC, and Joseph Y. Ahmad and Rey Flores of Ahmad Zavitsanos Anaipakos Alavi & Mensing PC.

The case is Meghan Magee et al. v. Francesca's Holdings Corp. et al., case number 1:17-cv-00565, in the U.S. District Court for the District of New Jersey.

--Editing by Jack Karp.