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Exotic Dancers Score Class Cert. In FLSA Action

By Zach Winnick

Law360, Los Angeles (November 29, 2011, 9:20 PM ET) -- A Connecticut federal judge last week conditionally certified a class of exotic dancers who say they were improperly classified as independent contractors in violation of the Fair Labor Standards Act, ruling the defendants' argument that some had signed arbitration agreements was immaterial.

U.S. District Judge Mark R. Kravitz ruled Nov. 23 that all exotic dancers who worked at the Groton, Conn., topless bar and strip club Gold Club Groton in the last three years should be sent notice of the suit and the chance to opt in, deferring the question of whether each had signed a so-called entertainment lease with an arbitration provision.

"If anyone who signed a lease wishes to opt in, the court will then determine whether his or her contract is enforceable," the judge wrote. "If so, the individual will be able to proceed with arbitration; if not, the individual will be able to opt in to [the] suit."

Wednesday's ruling marked a victory for the Groton dancers after a setback in May, when Judge Kravitz stayed the case with respect to two of the three named plaintiffs after finding they had signed enforceable arbitration agreements.

Plaintiffs Dina Nicole D'Antuono, Roman P. Cruz and Karen Vilnit filed the putative class action in January, arguing the Gold Club owners Service Road Corp. and Cousin Vinnie's Back Room Inc. had misclassified them as independent contractors instead of employees.

The plaintiffs say they were paid only in tips when they worked at the club between 2007 and 2010, alleging the defendants' failure to pay them as employees violated state and federal minimum wage laws.

In May, Judge Kravitz found that D'Antuono and Vilnit had each signed an entertainment lease containing an enforceable arbitration provision, ordering the case stayed as to them pending arbitration.

Cruz, the remaining plaintiff, filed a motion in August to conditionally certify a class of exotic dancers who worked at Gold Club locations in Groton and Hartford, Conn., over the past three years, arguing the dancers should receive notice of the lawsuit and the opportunity to join as plaintiffs.

Judge Kravitz ruled Wednesday that Cruz had made the necessary factual showing that she and potential plaintiffs were victims of a common policy or plan, rejecting as irrelevant defense arguments that Cruz had not worked at the club and is a "professional plaintiff."

The judge also analyzed what he called the harder question of whether his ruling staying the case with respect to D'Antuono and Vilnit had any effect on potential opt-in plaintiffs who had signed similar entertainment leases, finding the ruling did not bar conditional

certification.

"That the applicability of the arbitration agreements will need to be determined individually should not prevent class certification," Judge Kravitz wrote Wednesday. "As Ms. Cruz points out, many courts have found that the existence of arbitration agreements is irrelevant to class certification."

Judge Kravitz limited his certification ruling to dancers at the Groton club, where Cruz worked, saying he would allow dancers at the Hartford club to participate if they moved to intervene.

The judge ordered that the defendants provide the names, stage names, work dates and addresses of all potential class members by Dec. 22, and ordered that notice be posted at a prominent location in Gold Club Groton, either in the dressing rooms or another area used primarily by the dancers.

"This is an important victory, one that we have been stressing is the correct outcome, since the purpose of the notice provision of the FLSA is to ensure that other similarly situated employees get notice of their rights," Cruz's attorney Shannon Liss-Riordan told Law360. "With this result, employers can't use arbitration clauses to keep their employees in the dark about their rights."

Cruz is represented by Shannon Liss-Riordan, Sara Smolik and Stephen Churchill of Lichten & Liss-Riordan PC and Richard Hayber.

The defendants are represented by Allan Rubin, Christina Daskas, David Golder, Paul DeCamp and William Anthony of Jackson Lewis LLP.

The case is Dina Nicole D'Antuono et al. v. Service Road Corp. et al., case number 3:11-cv-00033, in the U.S. District Court for the District of Connecticut.

--Editing by Elizabeth Bowen.

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