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## Starbucks Unfairly Split Mass. Baristas' Tips: Judge

By Allison Grande

Law360, New York (February 11, 2011) -- A magistrate judge has recommended certifying a class of Starbucks Corp. baristas in Massachusetts and granting summary judgment on a state wage law claim challenging the inclusion of shift supervisors in the baristas' tip pool.

In separate orders issued Tuesday, Magistrate Judge Leo T. Sorokin of the U.S. District Court for the District of Massachusetts recommended that the court allow both the plaintiffs' motion to certify a class of Starbucks baristas who have worked in the state during the past six years and their partial motion for summary judgment on the claim that the company's tip-sharing policy violates Massachusetts tips law.

The summary judgment determination also recommended allowing Starbucks' motion for summary judgment as to the remaining three common law claims — unjust enrichment, breach of implied contract and unlawful interference with contractual and/or advantageous relations — which the plaintiffs purposely chose not to pursue.

But the plaintiffs did actively pursue their Massachusetts tips law claim, arguing that the company violated this law by allowing shift supervisors with some managerial duties to share in tip pools with baristas.

In 2004, the Massachusetts legislature amended the state's tips law to narrow the scope of individuals eligible to participate in tip pools by excluding any employee with "any managerial responsibility."

Prior to this amendment, the law prohibited pooling of tips from an "employee engaged in the servicing of food or beverage," language that left courts uncertain whether it intended to permit the sharing of tips with employees not primarily engaged in the service of food or beverages, resulting in differing interpretations in court rulings.

Starbucks argued that the law did not apply to the instant action because the company's shift supervisors bear no managerial responsibility and the money left by customers is not a tip within the meaning of the statute because the customers are leaving the tip for the baristas and shift supervisors who provided service to them.

In his recommendation, Judge Sorokin shot down both arguments, finding that the "undisputed evidence" of the case establishes that shift supervisors have "at least some managerial responsibilities" — including directing other workers to various workstations and reminding them to take breaks — and that the money left by customers qualifies as a tip under the law because it recognizes service performed by the baristas.

The decision also found that a California appellate court's June 2009 reversal of a \$105 million ruling in favor of 120,000 similarly situated servers in the state has no bearing on the instant action because the law applied by the California court "differs materially" from

the Massachusetts tip law.

Plaintiffs' counsel Shannon Liss-Riordan of Lichten & Liss-Riordan PC on Friday called the magistrate judge's summary judgment recommendation a "straightforward interpretation" of how the state legislature decided to structure the applicable law, adding that any added compensation for shift supervisors should come out of Starbucks' pockets and not out of the baristas' tip pool.

In his other recommendation, Judge Sorokin agreed that the class of roughly 2,500 Starbucks baristas employed in the company's 150 locations in Massachusetts since March 2005 should be certified.

In recommending certification, Judge Sorokin rejected Starbucks' argument that the plaintiffs had failed to meet the adequacy requirement because the putative class representatives' interests are in conflict with those of the more than 450 putative class members who formerly worked as baristas during the class period and now work as shift supervisors.

The plaintiffs are represented by Lichten & Liss-Riordan PC.

Starbucks is represented by Akin Gump Strauss Hauer & Feld LLP and Goodwin Procter LLP.

The case is Matamoros et al. v. Starbucks Corp., case number 1:08-cv-10772, in the U.S. District Court for the District of Massachusetts.

--Editing by John Williams.

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