

NY Starbucks Baristas Want Class Cert. In Tips Spat

By Julie Zeveloff

Law360, New York (February 27, 2009) -- Former Starbucks Corp. baristas in New York have notified the court of their intent to move for class certification in a suit over the coffee chain's policy of splitting the servers' tip pool with shift supervisors, a policy the plaintiffs claim violates state wage laws.

Lead plaintiffs Jeana Barenboim and Jose Ortiz lodged the notice of intent along with a memorandum in support of class certification Thursday in the U.S. District Court for the Southern District of New York.

The lawsuit was filed against Starbucks in April on the heels of a \$105 million ruling in favor of similarly situated servers in a state court in California last March.

According to the memorandum, Starbucks violated New York state wage laws by distributing tip money intended for baristas to shift supervisors, handing out tips on a weekly basis instead of on a per-shift basis and failing to distribute tips to baristas-in-training.

The plaintiffs are asking for class certification for all baristas who have worked at Starbucks coffee shops in New York in the past six years.

The complaint estimates that the proposed class in New York could likely exceed 2,000 people and that the amount in controversy is more than \$5 million. The judgment in California, by comparison, included 120,000 former employees.

The memorandum also asked the court to appoint plaintiffs Barenboim and Ortiz as class representatives and labor law firms Pyle Rome Lichten Ehrenberg & Liss-Riordan PC and Joseph & Herzfeld LLP as class counsel.

Starbucks said in a statement that baristas and shift supervisors are hourly workers who provide the same customer service.

"Our tip policy allows hourly partners to receive their fair share of customer tips," the statement said. "Shift supervisors are not managers and have no managerial authority."

The company said it plans to vigorously defend itself against this and other similar lawsuits.

An attorney for the plaintiffs did not immediately respond to requests for comment Friday.

Barenboim initially filed suit in April, and Ortiz and another former barista, Revans Ragbir, were added as lead

plaintiffs soon after.

In June, the federal judge overseeing the suit consolidated Barenboim's case with a second class action making similar allegations against Starbucks, but declined to consolidate a third putative class action because of opposition from the parties.

Since the California ruling, baristas in Massachusetts and Minnesota have also lodged putative class actions against the company, alleging its national tip-sharing policy violates wage statutes in their states.

The outcome of the California case could have broad ramifications for plaintiffs in other states.

"The New York law is almost identical to the California law, so the California decision is obviously very significant," Shannon Liss-Riordan, an attorney with Pyle Rome who represents the plaintiffs in the current matter, said when the suit was filed.

Starbucks has vehemently disputed the claims of the suits that have followed the California decision. It has argued that shift supervisors are hourly employees, not managers, who serve customers and are entitled to a share of the tips.

"We believe the California court's decision is not only contrary to the law, but also fundamentally unfair and beyond all common sense and reason," the company said in a statement when that ruling came down. "Unfortunately, copycat lawsuits have been filed. We intend to vigorously fight all such unjust lawsuits."

In the California case, Starbucks was ordered to pay approximately 120,000 current and former California baristas \$86.7 million in back tips, plus interest. The California Superior Court judge overseeing the case also issued an injunction preventing Starbucks from continuing to compensate shift supervisors with tips from the tip pool.

Those baristas commenced their class action against Starbucks in 2004. Their case received a boost in February, when the judge ruled that shift supervisors were "agents" under state law because they supervised and directed baristas.

The plaintiffs are represented in the current matter by Joseph & Herzfeld LLP and Pyle Rome Lichten Ehrenberg & Liss-Riordan PC.

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

The case *In re: Starbucks Employee Gratuity Litigation*, case number 08-cv-3318, in the U.S. District Court for the Southern District of New York.

--Additional reporting by Jocelyn Allison and Ryan Davis