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Exotic Dancers Seek Class Certification In FLSA Suit

By **Julie Zeveloff**

Law360, New York (August 25, 2008) -- Exotic dancers at a Cleveland strip club have asked a federal judge for conditional class certification in a Fair Labor Standards Act suit in which they accuse their employer of failing to pay minimum wage and improperly collecting a portion of their nightly tips.

Lead plaintiff Jennifer Newark filed the motion for certification, expedited opt-in discovery and court-supervised notice to potential plaintiffs on Saturday in the U.S. District Court for the Northern District of Ohio.

Newark lodged her complaint against Executive's Den and Manager Anthony J. Schilero on Aug. 7. Since then, two of her co-workers have opted in to the suit, which accuses the club of violating the Fair Labor Standards Act and the Ohio Minimum Fair Wage Standards Act.

The class could ultimately encompass between 50 and 75 former and current dancers, said Anthony J. Lazzaro, who represents the plaintiffs.

Executive's Den misclassified its dancers as "independent contractors," rather than employees, and failed to pay them minimum wages and overtime compensation, according to the complaint.

The women allege they were misclassified because they were economically dependent on Executive's Den and because the club set their fees and schedules, required them to solicit drink orders from customers and insisted that they perform on the center stage during the nightly rotation.

"The analysis turns on whether they are classified as employees or independent contractors, and almost every court has said that they are employees because of the degree of control that the club has over them," Lazzaro said. "They are not completely free to make their own

decisions.”

The club also required the dancers to pay a “club fee” out of their nightly tips. But they were required to pay the fee regardless of how much money they made in a given night, the suit says.

“It's not fair to these girls because on a slow night, they might not make any tips but would still have to pay back the house, anywhere from \$12 to \$32,” Lazzaro said. “No employee should have to pay their employer to go to work.”

The dancers seek collective action certification, an injunction against Executive's Den enjoining it from future labor law violations, liquidated damages for unpaid wages under the FLSA, treble damages under the state law, the return of all tip money and attorneys' fees.

In Saturday's motion, the plaintiffs defined the class as all dancers employed by Executive's Den in the three years before the complaint was filed. They asked the court to compel the club to turn over the identity and contact information of anyone who danced at the club since August 2005.

"Whether they were misclassified or not, we don't think that there are any damages here, so it's really an academic issue," said an attorney for Executive's Den.

The plaintiffs are represented in the matter by The Lazzaro Law Firm LLC.

Executive's Den and its manager are represented in the matter by Littler Mendelson PC.

The case is Jennifer Newark v. Executive's Den, et al., case number 08-cv-01901, in the U.S. District Court for the Northern District of Ohio.

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