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## Darden Restaurants Gets 218,000-Member Class Decertified

By **David McAfee**

Law360, Los Angeles (September 4, 2014, 9:42 PM ET) -- A Florida federal judge has decertified a collective action made up of more than 218,000 servers and bartenders who work for a number of restaurants owned by Darden Restaurants Inc. and accuse the company of requiring them to work off the clock, saying the case doesn't involve uniform treatment.

On Monday, U.S. District Judge William P. Dimitrouleas granted the defendants' motion to decertify the Fair Labor Standards Act collective action brought by employees of Bahama Breeze, Olive Garden, Red Lobster and other Darden-owned chains. The court had granted conditional certification to a class of all servers and bartenders who worked at the restaurants between Sept. 6, 2009, and Sept. 6, 2012, according to court documents.

Judge Dimitrouleas sided with the defendants, who noted that the more than 20,000 opt-in plaintiffs worked in different positions at different chains in different locations under different policies and managers.

"Here, the opt-in plaintiffs have disparate factual and employment settings. They vary between bartenders and servers. They work across 1,995 restaurants spread across fifty (50) states," Judge Dimitrouleas wrote in the 12-page order. "Thus, the opt-in plaintiffs differed in job titles, worked across numerous locations, experienced varying policies and practices, and engaged in disparate working conduct giving rise to a variety of claim combinations."

The judge held that the case doesn't involve uniform treatment by defendants or substantial similarity between the 20,255 opt-in plaintiffs' employment circumstances. The decision also weighed the various defenses available to the defendants that appear to be individualized, as well as procedural considerations, and concluded that each factor favors decertification.

Darden says it is "extremely pleased" with the court's decision.

"As we said from day one, these allegations flew in the face of our values. Our people are the most important part of our business, and it is outrageous to think there would be a systemic practice in place that would cheat our people and violate the law," a Darden spokesman told Law360 late Thursday night. "The reality is we have robust programs and policies in place to ensure that our people are treated the right way and given the opportunity to build careers with our company."

The suit accused the defendants of violating the FLSA's minimum wage and overtime requirements by requiring the server and bartender plaintiffs to work off the clock and by taking a tip credit against their hourly wage while requiring an excessive amount of unrelated "sidework."

Amanda Mathis, a former waitress at LongHorn Steakhouse locations in Florida and Georgia,

and James Hamilton, a waiter at an Olive Garden in Georgia, **filed suit** in 2012 claiming that Darden regularly requires employees to perform tasks before and after their shifts without paying them.

The company also requires tipped employees to perform nontipped work for less than minimum wage in violation of the FLSA and neglects to pay overtime, according to the complaint.

The plaintiffs were granted conditional certification, but the defendants moved in June to decertify the collective action. The court agreed on Monday that the factors involved support decertification, dismissing the opt-in plaintiffs without prejudice to file separate suits.

"Rather, the servers and bartenders comprising the 20,255 opt-in plaintiffs worked under varying policies as to a tip-credit wage and off-the-clock work in 1,995 different restaurants across the country," Judge Dimitrouleas wrote. "Individual managers in those restaurants could control the amount and type of work performed on-the-clock or off-the-clock, despite any uniform policy stated by defendants."

Representatives for the plaintiffs didn't immediately return requests for comment late Thursday night.

The plaintiffs are represented by David H. Lichter of Higer Lichter & Givner LLP, Ted E. Trief, Barbara Olk, Shelly L. Friedland and Stan Gutgarts of Trief & Olk and Peter S. Pearlman and Alex Pisarevsky of Cohn Lifland Pearlman Herrmann & Knopf LLP.

The defendants are represented by Patrick G. DeBlasio, Aaron Reed, Jessica T. Travers, John A. Ybarra, Amy S. Ramsey and Michael J. Lehet of Littler Mendelson PC and Gerald L. Maatman Jr. and Matthew Gagnon of Seyfarth Shaw LLP.

The case is Amanda Mathis et al. v. Darden Restaurants et al., case number 0:12-cv-61742, in the U.S. District Court for the Southern District of Florida.

--Additional reporting by Ian Thoms. Editing by Brian Baresch.

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