

Law360, New York (January 21, 2015, 6:43 PM ET) -- A New York federal judge on Tuesday granted conditional certification to a 42,000-worker nationwide class of tipped TGI Friday's employees in a collective action alleging they had to perform underpaid side work in violation of the Fair Labor Standards Act.

In granting conditional certification, U.S. District Judge Analisa Torres ruled the plaintiffs had shown common allegations of FLSA violations, including denial of minimum wage and overtime compensation.

“This evidence, coupled with the evidence of defendant’s centralized control over TGI Friday’s restaurants nationwide, suffices to meet the minimal burden for conditional certification,” the judge wrote.

The suit, filed against Friday's and its parent company, Carlson Restaurants Inc., claims that tipped workers have to do non-tip-producing work like cleaning, food preparation and stocking and therefore are owed minimum wage and overtime.

Brian S. Schaffer of Fitapelli & Schaffer LLP, representing the workers, said the newly certified group could end up being among the largest ever in a restaurant collective action.

“Obviously we are very pleased with the decision,” he said. “It’s a nationwide certification which will encompass more than 42,000 people.”

The dispute began in April when Friday's employee Jamel Flood and three other named plaintiffs sued to challenge the tipping policy. They sought to represent a class that includes servers, bartenders and hosts who have worked at Friday's since April 17, 2011.

They contend they are entitled to the full minimum wage — as opposed to the lesser minimum wage for tipped workers — when doing side work.

The plaintiffs filed for preliminary class certification in September, saying that granting the motion will allow potential opt-in plaintiffs to be notified and join the action.

In their argument opposing conditional certification, Friday's claimed the named plaintiffs had not even shown they were similar to one another, let alone the thousands of other tipped workers in TGI Friday’s restaurants around the country.

But Judge Torres disagreed and said courts have authorized nationwide certification on “comparable or thinner records.”

Judge Torres also rejected the company’s argument that it has policies that prohibit FLSA violations, saying that was not grounds to deny certification.

“At this stage, plaintiffs ‘need only to show evidence of a de facto policy which, in practice, resulted in a pattern of FLSA violations,’” she said.

According to Schaffer, the defendants have already offered about two dozen workers more than \$700,000 in settlements.

“We believe the offers that have been made so far are a reflection of how the company sees the case and how they view their liability,” he said.

Counsel for Carlson Restaurants could not immediately be reached for comment on Wednesday.

The plaintiffs are represented by Justin M. Swartz and Sally J. Abrahamson of [Outten & Golden LLP](#) and Joseph A. Fitapelli, Brian S. Schaffer and Frank J. Mazzaferro of Fitapelli & Schaffer LLP.

The defendants are represented by Roger H. Briton, Jeffrey W. Brecher and Felice B. Ekelman of [Jackson Lewis PC](#).

The case is Jamel Flood et al. v. Carlson Restaurants Inc. et al., case number [1:14-cv-02740](#), in the U.S. District Court for the Southern District of New York.

--Additional reporting by Igor Kossov. Editing by Brian Baresch.