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Nissan Dealership Sales Reps Seek Cert. In FLSA Suit

By **Melissa Daniels**

Law360, Los Angeles (February 15, 2017, 8:31 PM EST) -- Sales representatives for the Nissan dealership of Star Auto Group asked a New York federal judge on Tuesday to grant conditional certification in a Fair Labor Standards Act case alleging they were paid less than minimum wage and shorted commission.

In a motion seeking conditional certification of a collective action under the FLSA filed Tuesday, plaintiffs Razvan Hotaranu and Luis Felix say sales representatives received a base rate of \$100 per week for weeks where they didn't earn a commission, causing their pay to fall below minimum wage requirements.

"Conditional certification is appropriate because defendants' FLSA violations stem from a common practice of denying its sales representatives the minimum wage to which they are entitled under the FLSA," the motion says.

In addition to certification, the motion asks the court to order the defendants to provide names and contact information of all putative class members.

The complaint filed in September alleges failure to pay minimum wage under the FLSA and a host of violations of New York state labor laws. The plaintiffs say there were many instances where a sales representative did not earn any commissions, or earn enough to reach minimum wage and overtime requirements of the FLSA.

Regardless of how many hours they worked or how much commission they earned, the sales representatives didn't earn any extra money, the complaint said.

The complaint further alleges the dealer manipulated the gross profits of sold cars that reduced what sales representatives made on commission. Hotaranu and Felix received flat commissions regardless of the gross profit on the car sold, the complaint said, despite agreed-upon calculations in their commission agreements.

Star Nissan in November filed an answer that denied the allegations and asked the court to dismiss the complaint.

Tuesday's motion for certification says that the plaintiffs have met their burden for conditional collective certification because they have shown how sales representatives are subject to the same policies. At this stage, the burden for demonstrating that potential plaintiffs are similarly situated is "very low or minimal," and this case has a "well-pled" complaint and four declarations from Star Nissan employees, the motion said.

Additionally, the defendants have previously been accused of failing to pay sales

representatives minimum wages pursuant to the FLSA, the motion says, citing a complaint filed in 2015.

The motion asks the court to order a 60-day notice period for putative class members to join the case.

Representatives for the parties didn't immediately respond to requests for comment on Wednesday.

The sales representatives are represented by Joseph A. Fitapelli and Frank J. Mazzaferro of Fitapelli & Schaffer LLP.

The dealership and individual defendants are represented by Jamie S. Felsen and Matthew A. Brown of Milman Labuda Law Group PLLC.

The case is Hotaranu et al. v. Star Nissan Inc. et al., case number 1:16-cv-05320 in the U.S. District Court for the Eastern District of New York.

--Editing by Orlando Lorenzo.

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