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Conditional Cert. Sought In Sing Tao Papers OT Suit

By **Ben James**

Law360, New York (March 09, 2010) -- A former Sing Tao Newspapers New York Ltd. employee is seeking conditional collective action certification in a suit accusing the company of failing to pay advertising sales representatives the required minimum wage or a premium rate for overtime hours.

Named plaintiff Wei Chu Wang filed the motion for collective certification in the U.S. District Court for the Southern District of New York on Monday, asking Judge Alvin K. Hellerstein to conditionally certify Wang's Fair Labor Standards Act claim and order Sing Tao to fork over the names and contact information for potential opt-in plaintiffs.

Wang's Dec. 23, 2009, complaint named Sing Tao Newspapers New York and Robin Mui — identified as the company's chairman or CEO — as defendants. The Sing Tao Daily is one of the two biggest Chinese language newspapers in circulation in the U.S., the complaint says.

Wang, who says he worked for Sing Tao and Mui from September 2003 through August 2008, claims that the defendants violated the FLSA and the New York Labor Law by not paying him overtime or minimum wage.

The FLSA class Wang proposed would include nonexempt people employed by the defendants as an ad sales representative within the past three years.

According to Wang, he was paid \$1,000 a month plus commission for his work for the defendants. The defendants claimed Wang was exempt from the applicable overtime pay and minimum wage requirements, but didn't specify which exemption they were relying on in making that determination, according to a memorandum of law in support of the certification bid.

The "modest factual showing" necessary to win preliminary certification on FLSA claims has been met in this case, according to the memorandum.

Although the plaintiff is confident he can establish that the defendants failed to properly compensate employees, getting into the underlying merits of the case is inappropriate at this stage, the memorandum said.

Expedited notice is critical in FLSA cases because potential plaintiffs must opt in to the action, and the statute of limitations keeps running on each claim until the individual files a consent form with the court, the memorandum also pointed out.

Anthony Rao, an attorney for the defendants, said he anticipated the class in this case would be small and include perhaps less than a few dozen plaintiffs.

"We're going to put our best defenses forward, and we believe we have meritorious defenses to even conditional certification, notwithstanding the lenient standard," Rao said Tuesday.

An attorney for Wang declined to comment Tuesday.

Wang is represented by Kraselnik & Lee PLLC.

The defendants are represented by Rao Tiliakos LLP.

The case is Wang v. Sing Tao Newspapers New York Ltd. et al., case number 09-10454, in the U.S. District Court for the Southern District of New York.

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