

Clarks Shoes To Step Over Calif. Unpaid Wages Class Action

By **Daniel Siegal**

Law360, Los Angeles (July 16, 2014, 9:10 PM ET) -- A California judge on Wednesday tentatively dismissed a putative class action alleging The Clarks Cos. NA shorts its retail managers on their wages, saying in his written tentative ruling that the plaintiff's own declarations indicated she received sufficient commissions to qualify for a retail sales overtime exemption.

Los Angeles Superior Court Judge Frederick C. Shaller said his tentative ruling is to grant the British shoemaker's motion for summary judgment in the putative class action, filed in April 2012 on behalf of former manager Harriett Tapia, which alleged it owes overtime pay to the store managers of its dozens of retail locations in California.

Judge Shaller's ruling found that Tapia's declarations admitted her pay was more than one and a half times the minimum wage, and that more than half of her pay came from commissions, and thus she qualifies for the labor code "inside retail sales" overtime exemption.

Thomas Falvey of the Law Offices of Thomas Falvey, representing Tapia, urged Shaller to reconsider his tentative ruling, arguing that a commission Tapia received on all net sales made in the store she managed does not qualify as a commission as defined in the Department of Labor's Field Operations Handbook.

"They're claiming the commissions are such that they're not required to provide overtime," he said. "[The handbook] is not talking about a company getting commissions it's talking about a person getting commissions ... sometimes what the legislature does is not entirely clear, so one has to rely on common sense."

The tentative ruling also dismissed Tapia's claim for failure to provide rest and meal breaks, as Tapia had testified that she did not remember when she might have had to skip meal breaks.

Falvey urged the court to consider declarations the plaintiffs had submitted from other employees stating that Clarks forced employees to work through their required breaks.

But Jason S. Mills of Morgan Lewis & Bockius LLP, representing Clarks, told the judge that the experiences of other employees should not be considered at this stage.

"This is a putative class action, there is no class, no motion to certify class has been filed ... this is about Ms. Tapia and her own personal experiences," he said.

Judge Shaller said he would look at the day's arguments before issuing his final ruling, and took the case under submission, saying he didn't, "know that it will make a difference, but it might."

Tapia is represented by Thomas W. Falvey, Michael H. Boyamian and Armand R. Kizirian of the Law Offices of Thomas W. Falvey as well as Kelly A. Knight and James Y. Yoon of the Law Offices of Kelly A. Knight.

Clarks is represented by Barbara A. Fitzgerald, Jason S. Mills and Kathryn T. McGuigan of Morgan Lewis & Bockius LLP.

The case is Harriette Tapia v. The Clarks Companies N.A. et al., case number BC482183 in the Superior Court of the State of California, County of Los Angeles.

--Editing by Chris Yates.

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