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Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Spearmint Rhino, Dancers Asked To Weigh In On Epic's Impact

By **Kat Greene**

Law360 (May 29, 2018, 10:56 PM EDT) -- The Spearmint Rhino chain of nightclubs and a group of exotic dancers who worked there were ordered by a California federal judge Tuesday to explain how the U.S. Supreme Court's decision in Epic Systems impacts a contested \$8.5 million settlement in their case.

The clubs, led by Santa Barbara Hospitality Services Inc., had drawn the court's attention to the Supreme Court's **May 21 ruling** in Epic Systems Corp. v. Lewis, in which the justices found 5-4 that employment agreements forcing workers to sign away their rights to pursue class claims are legal, the day after it came down, court records show.

U.S. District Judge Jesus G. Bernal lodged a minute order on Tuesday with simple instructions to the lead dancers in the case, the defendant companies, an objector to the settlement and intervening dancers who don't want their employment status to change: submit six-page briefs by June 8 explaining whether and how the high court's ruling affects the instant suit and the settlement agreement, according to the filing.

The long-running dispute between the Spearmint Rhino clubs and the dancers who work there had appeared, earlier this year, to be **reaching a settlement** that would do away with claims by lead plaintiffs Lauren Byrne, Bambie Bedford and Jennifer Disla that they were denied overtime and minimum wage, weren't provided with meal and rest breaks and had their tips misappropriated.

In the class and collective action, only a few of the more than 8,000 class members objected to a proposed \$8.5 million deal, and just more than 50 opted out, the lead dancers noted in a bid for final approval in late February.

The instant suit stems from a **November 2012 settlement** signed off on by U.S. District Judge Virginia A. Phillips that called for a nearly \$13 million payout to Spearmint Rhino employees and required the clubs to stop treating the dancers like independent contractors, instead handling them as owners or shareholders in the business.

On the same day as Byrne's bid for final settlement approval, a group of intervenors who currently perform as exotic dancers at the defendants' clubs asked the court to find that they are not in fact employees. They said that while they could have chosen to be "employees" they chose the opposite instead, arguing that they didn't want to be subjected to the level of control the clubs have over "employees."

"Plaintiffs, on the other hand, all of whom are former entertainers, have no interest in preserving the choice to perform as non-employees," the intervenors said.

But the opposition to the deal may be fierce. Shannon Liss-Riordan of Lichten & Liss-Riordan PC, who has **been involved** in numerous suits **raising the question of whether certain employers are misclassifying workers** as independent contractors, represented a dancer who lodged an opposition to the settlement on February 16, about a week before the lead class members asked for final approval of the deal, court records show.

Liss-Riordan's client, Adriana Ortega, and another woman representing herself pro se, Ashley Ingraham, argued in an objection they filed together that the settlement shuts out many dancers without paying them anything at all, and that notice to the potential class members was insufficient. Less than 5 percent of the employees filed claims, and any unused funds will be paid back to the defendants, Liss-Riordan noted.

Liss-Riordan told Law360 on Tuesday that she plans to follow the court's order and file a brief on the high court's ruling in Epic, noting that the decision "certainly makes it harder" for employees to bring claims.

"But it does not mean that their claims have no value, and it does not justify a settlement like this one where the class would be receiving approximately \$150,000 in total, while the plaintiffs' attorneys receive more than \$2 million," she said.

And the Spearment Rhino may also be poised to shut down the settlement. In July, it had asked the court to stay Byrne's suit while the parties awaited the Supreme Court's decision on the class arbitration waiver issue in *Ernst & Young LLP v. Morris*, *NLRB v. Murphy Oil USA Inc.* and *Epic Systems Corp. v. Lewis*, which the high court ultimately heard together and ruled on under Epic Systems, court records show.

The clubs had asked Judge Bernal to pause the underlying dancers' suit because the club's workers had signed employment agreements with class waivers, and Spearment Rhino was seeking to avoid the cost of notice to a class and other class issues with a stay, according to their July motion.

That same day, the lead dancers filed a bid to **certify a collective** under the Fair Labor Standards Act, and both parties agreed to hold off on the issue in a stipulation. Judge Bernal then granted that stipulation in August. But by early October, the parties had reached a settlement, which they pitched to the court even as the intervening dancers filed their own complaint, according to filings in the case.

A third objector, Shala Nelson, has argued in her own briefs that permitting the intervening dancers to get their declaration would be beyond the court's power because the intervenors and the clubs don't disagree with one another on the employment status of the dancers, according to her filings.

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

The dancers backing the settlement are represented by Melinda Arbuckle of Baron & Budd PC, Todd Slobin and Richard J. Prieto of Shellist Lazarz Slobin LLP, and Jennifer Liakos, Salvatore C. Badala and Paul B. Maslo of Napoli Shkolnik PLLC.

The clubs are represented by Peter E. Garrell and John M. Kennedy of Garrell Law PC.

The intervenors are represented by William X. King and Casey T. Wallace of Feldman & Feldman PC.

Objector Ortega is represented by Shannon Liss-Riordan of Lichten & Liss-Riordan PC. Objector Ingraham represents herself.

The case is Lauren Byrne v. Santa Barbara Hospitality Services Inc. et al., case number 5:17-cv-00527, in the U.S. District Court for the Central District of California.

--Additional reporting by Vin Gurrieri, Adam Lidgett, Alison Noon, Chris Villani and RJ Vogt.

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