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Home Appraisers Slap JPMorgan With FLSA Action

By Joseph Marks

Law360, New York (October 07, 2010) -- Appraisers who evaluate houses for JPMorgan Chase & Co. have launched a putative collective action accusing the financial giant of misclassifying them as salaried employees and failing to pay them overtime.

For years JPMorgan also failed to give the appraisers meal breaks and to follow other requirements of the Fair Labor Standards Act, according to a complaint filed Tuesday in the U.S. District Court for the Northern District of California.

The plaintiffs estimate the proposed class could number in the thousands and are seeking overtime pay going back three years, plus interest and attorneys' fees.

JPMorgan reclassified the appraisers as hourly employees in July or August, but failed to give them back pay for overtime hours worked during their years as salaried employees, the suit states.

Attorney Bryan Schwartz, who represents the plaintiffs, said he suspected JPMorgan's decision to reclassify the appraisers was instigated by the U.S. Court of Appeals for the Second Circuit's November decision in Michael J. Davis et al. v. JPMorgan Chase and Co.

In that case, the appeals court found that JPMorgan loan underwriters had been misclassified as salaried employees and were entitled to overtime pay. The decision reversed a district court's summary judgment in favor of the company.

"I don't have any inside source at Chase who was in the board room when they were reclassified, but given the timeline, I suspect they saw this situation and some others like it and it set the wheels in motion," Schwartz said.

"A lot of the same arguments [from Davis] will come up in this case," he said.

A spokesman for JPMorgan declined to comment Thursday.

According to the complaint, the appraisers did not bring a great deal of personal judgment to their

jobs and so should not qualify for the FLSA's learned professionals exemption.

Rather, the appraisers evaluated homes using strict guidelines established by JPMorgan and filled out a checklist for each home, the complaint says. They were evaluated primarily by how closely they adhered to those guidelines, it says.

"This is a situation where one of the biggest banks in the country is trying to cut corners," Schwartz said. "They know they were wrong in how these appraisers were classified, which is why they reclassified them ... [The appraisers] are very much like investigators and underwriters, who courts around the country are increasingly finding to be nonexempt."

Two JPMorgan engineers whose jobs were reclassified as protected under the FLSA in 2008 were denied certification of a collective action in March in the U.S. District Court for the Southern District of New York. The engineers are appealing that ruling.

The plaintiffs in the current matter are represented by Bryan Schwartz Law.

Counsel information for JPMorgan was not immediately available.

The case is Mary Ann Adlao et al. v. JPMorgan Chase & Co. et al., case number 10-4508, in the U.S. District Court for the Northern District of California.