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**Subject:** Activity in Case 1:19-cv-10791-RGS DaRosa v. Speedway LLC Order on Motion to Certify Class  
**Date:** Wednesday, February 12, 2020 9:06:09 AM

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**United States District Court**  
**District of Massachusetts**

**Notice of Electronic Filing**

The following transaction was entered on 2/12/2020 at 9:04 AM EST and filed on 2/12/2020

**Case Name:** DaRosa v. Speedway LLC

**Case Number:** [1:19-cv-10791-RGS](#)

**Filer:**

**Document Number:** 47(No document attached)

**Docket Text:**

**Judge Richard G. Stearns: ELECTRONIC ORDER entered granting [27] Motion to Conditionally Certify FLSA Class. Joseph DaRosa, a former general manager (GM) of a Speedway convenience store in Brockton, Massachusetts, alleges that he and other Speedway store GMs were improperly classified as exempt salaried employees and that they are owed overtime wages under the Federal Labor Standards Act (FLSA) (Count I) and the Massachusetts Fair Wages Act (Count II). By way of this motion, DaRosa seeks conditional certification and issuance of notice under the FLSA claim.**

**The FLSA permits claims "by any one or more employees for and in behalf of himself or themselves and other employees similarly situated." 29 U.S.C.A. § 216(b).**

**To determine whether putative class members are similarly situated, the Court follows a two-tiered approach. First, at the "notice stage," the Court relies upon the pleadings and affidavits to determine, under a "fairly lenient standard," whether the putative class members "were subject to a single decision, policy, or plan that violated the law." Second, upon the close of discovery and a motion from an employer, the Court considers whether de-certification is warranted.**

*Burns v. City of Holyoke*, 881 F. Supp. 2d 232, 234 (D. Mass. 2012) (citations omitted).

Under the "fairly lenient standard" observed in the First Circuit, the court finds that DaRosa has made an adequate showing that Speedway GMs in level 1 to 5 stores are similarly situated. Relying on the GM position's job description, Speedway's Code of Conduct, and a dozen or so affidavits, DaRosa has made a prima facie showing that Speedway GMs in level 1 to 5 stores have the same title, position, and responsibilities across the stores, and were uniformly classified as salaried exempt employees. See *Trezvant v. Fid. Employer Servs. Corp.*, 434 F. Supp. 2d 40, 43 (D. Mass. 2006) ("Courts have held that plaintiffs can meet this burden by making a modest factual showing or asserting substantial allegations that the putative class members were together the victims of a single decision, policy, or plan that violated the law.") (internal quotation marks omitted). Further, the affidavits reflect that GMs worked the majority of their time on non-management tasks and often worked alone or with one other employee such that management was not their "primary duty." See 29 C.F.R. § 541.00 ("employee in a bona fide executive capacity" defined as one "whose primary duty is management" and "who customarily and regularly directs the work of two or more other employees"); 29 C.F.R. § 700 (a factor in determining an employee's "primary duty" is "the amount of time spent performing exempt work").

Speedway, for its part, relies on thirty-plus affidavits of GMs who claims to spend more than half their working time on management tasks in support of its position that its GMs are not "similarly situated." This evidence is more appropriately considered at stage two, after plaintiff has also had an opportunity to conduct discovery of the opt-in class. See *Trezvant*, 434 F. Supp. 2d at 43 ("At this stage, courts do not need to make any findings of fact with respect to contradictory evidence presented by the parties or make any credibility determinations with respect to the evidence presented.") (internal quotation marks omitted). Accordingly, the court **ALLOWS** DaRosa's motion for conditional certification. The court notes that although DaRosa referenced an amended class notice in his reply, it was not actually attached as an exhibit. The court requests that DaRosa submit the amended proposed notice no later than 2/18/2020. Speedway has until 2/21/2020 to submit any objections to the amended proposed notice. (Tang, Danni)

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