

Met Player's Hotspot Sued For Wage Violations

By **Leigh Kamping-Carder**

Law360, New York (April 18, 2011) -- Two former restaurant workers filed suit Friday in a New York federal court, claiming that an upscale Puerto Rican eatery co-owned by New York Mets player Carlos Beltran deprived a proposed class of minimum wages and overtime pay.

Sofrito failed to pay food service employees legal wages or to distribute tips properly, violating the Fair Labor Standards Act, according to the complaint filed Friday in the Southern District of New York. Server Kevin Martinez Rivera and bartender Dayana Depena allege the restaurant paid them \$35 per shift, regardless of how many hours they worked; improperly deducted wages based on customer walkouts; and failed to let employees know about the tip credit provisions under the FLSA and the New York Labor Law.

"Known for attracting A-list celebrities from all boroughs," the "posh Latin hotspot" got even hotter when Beltran, who was not named as a defendant, signed on as co-owner of the Manhattan restaurant in August, prompting its popularity to spike, the suit said. The restaurant also attracts Mets fans and players, according to the complaint.

Right fielder Beltran owns Sofrito with Genaro Morales and Benjamin Olan, whom the complaint names as defendants. The suit also targets Morales' newer Puerto Rican restaurant Sazon, located in Manhattan's Tribeca neighborhood.

Rivera and Depena filed the suit on behalf of a proposed opt-in class of waiters, bartenders and other food service workers who have worked at either restaurant. The suit also seeks to certify an opt-out class of at least 50 food service workers who were at the restaurants from April 15 to the date of final judgment.

The plaintiffs have asked to recover minimum wages, overtime compensation, misappropriated tips, spread of hours pay, unlawful deductions and other relief.

A woman who said she was an office worker at Sofrito said Monday that the restaurant had no comment.

Martinez worked at Sofrito from roughly April 2007 to April 2008 and then from March 2009 until April, while Depena worked at both restaurants from September 2009 through February, according to the complaint.

Wage-and-hour suits against restaurants are not new, but the past few years have seen a spike in such suits against restaurants in Manhattan. Many of the suits are being filed for claims under both the FLSA and the NYLL, which has a six-year statute of limitations.

Other Manhattan targets have included several restaurants owned by celebrity chef Mario Batali, as well as well-known eateries Cafe Boulud, Bobby Van's Steakhouse, Cafe Centro and Barolo, which settled a FLSA suit Monday.

In December, the New York State [Department of Labor](#) boosted minimum wages for tipped workers in the hospitality industry and clarified that restaurants may mandate tip pooling, addressing an issue that has spurred suits from restaurant workers opposed to pooling gratuities.

The plaintiffs are represented by Joseph A. Fitapelli and Brian S. Schaffer of Fitapelli & Schaffer LLP.

Counsel information for the defendants was not immediately available.

The case is Rivera et al. v. Morales et al., case number 1:11-cv-02567, in the U.S. District Court for the Southern District of New York.