

NYC Restaurants Stole Tips, Server Says In FLSA Wage Suit

By **Caleb Drickey**

Law360 (May 20, 2022, 8:53 PM EDT) -- A pair of Manhattan Chinese restaurants violated the Fair Labor Standards Act and the New York Labor Law by underpaying workers for untipped work, a server alleged in a class and collective action filed Friday in New York federal court.

In her **complaint**, named plaintiff Jessie Mangahas accused Eight Oranges Inc., also known as The Bao, and Chibaola Inc., doing business as Uluh, of forcing tipped workers including other servers and bartenders to perform "excessive" untipped work without proper compensation. The server also alleged the restaurants illegally deducted from workers' pay and attempted to bribe potential class members in an attempt to kill the suit before it could be filed.

"As part of their regular business practice, defendants have intentionally, willfully and repeatedly engaged in a pattern, practice, and/or policy of violating the FLSA with respect to plaintiff and the FLSA collective," Mangahas said.

The Bao and Uluh, which are both owned by Joanne Hong Bao and Richard Lam, operate as sister entities, with employees of the two restaurants picking up shifts at either, depending on staffing needs, according to the suit. The restaurants also shared ingredients, supplies and illegal pay policies, Mangahas said.

According to Mangahas' complaint, front-of-house servers were required to share their tips with managers and cooks, both of whom are classes of employee who do not interface with customers and are not entitled to claim a share of tips under the FLSA or the NYLL. Mangahas said the restaurants further depleted workers' take-home wages by forcing them to hand over all cash tips until the end of the week, when they were paid out a lower amount than they had paid in.

"At the end of the week, the tips that plaintiff and tipped workers received [from the cash register] were less than what they should have received," she said. "Management kept a percentage of plaintiff's and tipped workers' tips."

The suit also accuses the restaurants of lowering their wage bills by forcing tipped workers to perform work that should have been compensated by the minimum wage. Under the NYLL, employers may require tipped workers to perform some non-tipped tasks without paying minimum wages, so long as that so-called side work takes up less than two hours, or 20% of the work day.

At The Bao and Uluh, however, Mangahas said servers and other tipped workers spent over two hours per day cleaning bathrooms, shoveling snow and washing dishes, among other side work tasks. None of those tasks were related to the servers' primary tipped duties, and all should have been compensated by at least the minimum wage, Mangahas said.

Mangahas further accused the restaurants of illegally deducting the cost of customer walkouts, broken dishes and untaken lunch breaks from staff paychecks, and of failing to repay workers for the cost of their uniforms.

She said she sent a letter on May 9 to the restaurants detailing her claims and her plan to sue. Within a week, she said, management offered raises to employees who refused to opt in, and thousands of dollars in cash to four employees if they refused to speak to attorneys.

The owners also threatened to shutter their restaurants if employees opted into the proposed FLSA class, Mangahas said.

Mangahas calls for the creation of an FLSA collective of all current and former tipped workers dating back to May 2018, and a class of tipped workers seeking minimum wage claims under the NYLL dating back to 2015.

The suit claimed as damages all unpaid wages and overtime pay, unlawful deductions during the FLSA collective and NYLL class periods, plus unspecified liquidated damages.

A spokesperson for the restaurants declined to comment. Representatives of the workers did not immediately respond to requests for comment.

Mangahas is represented by Brian S. Schaffer, Armando Ortiz and Katherine Bonilla of Fitapelli & Schaffer LLP.

Counsel information for the restaurants was not immediately available.

The case is Mangahas v. Eight Oranges Inc. et al., case number 1:22-cv-04150, in the U.S. District Court for the Southern District of New York.

--Editing by Covey Son.