

NYC Restaurant Servers Nab Collective Cert. In Tip Theft Suit

By **Caleb Drickey**

Law360 (October 18, 2022, 10:00 PM EDT) -- A New York federal judge found Tuesday that a group of servers who claimed that a pair of Manhattan Chinese restaurants underpaid them and stole tips adequately alleged that they were subjected to the same pay policies and granted them conditional collective certification.

U.S. District Judge Lewis J. Liman **ruled** that a trio of declarations rose above hearsay asserting that the owners of Manhattan eateries The Bao and Uluh uniformly required tipped workers to perform untipped work at subminimum wage rates and misappropriated tips. Collective certification, the judge therefore held, was appropriate.

"Plaintiff has offered evidence of a uniform practice engaged in by defendants across the two integrated restaurants that affected all tipped workers similarly and that, if proven, would violate the [Fair Labor Standards Act]," Judge Liman said.

Tuesday's order permits named plaintiff Jessy Mangahas to notify all tipped workers employed by The Bao and Uluh, which are incorporated as Eight Oranges Inc. and Chibaola Inc., respectively, of her lawsuit.

In support of allegations made in her complaint that the restaurants and its owners misappropriated tips and underpaid for untipped work, Mangahas submitted her own sworn testimony and that of two colleagues. Although those three declarations bore certain similarities to each other, Judge Liman rejected the restaurants' assertions that they were virtually identical and not to be trusted.

All three servers said they and their colleagues were required to spend at least 20% of their days performing untipped work at tipped rates. However, the judge noted that all three servers submitted different, if partially overlapping, lists of co-workers who they said were subjected to the same practices.

That slight variation in their stories, the judge held, meant that they were not copycat declarations.

Additionally, the judge said similarities between the accounts of allegedly improper pay practices should be read as a mark in favor of collective certification. Stories of similar treatment were to be expected from workers who alleged they were subjected to uniform practices and policies.

"Each of the declarants testifies to the identical employment practices at their respective

place of employ or, in the case of Mangahas, at both restaurants. That is to be expected," the judge said. "The similarities among the declarations here do not entitle them to less weight."

The judge, therefore, approved the dissemination of collective action notices to a list of tipped workers provided by the restaurants.

Mangahas **sued the restaurants**, along with owner Richard Lam and his wife, Joanne Hong Bao, in May. Last month, Hong Bao asked to be dismissed from the suit, arguing that her **husband alone** controlled day-to-day operations at the restaurants.

Representatives for the parties did not immediately respond to requests for comment Tuesday.

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

Hong Bao, Lam and the restaurants are represented by Jonathan Ng and Rolanzo White of White & Ng LLC.

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 Emma Brauer.