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Ex-Server Wants Collective Cert. In Fla. Tip Theft Suit

By **Caleb Drickey**

Law360 (May 26, 2022, 7:26 PM EDT) -- A waiter and bartender told a Florida federal court that his suit against a beachside Fort Lauderdale restaurant should proceed as a collective action, arguing that he has enough evidence that his former employer imposed companywide policies to siphon tips away from workers and underpay for overtime.

In a **motion** Wednesday to conditionally certify two Fair Labor Standards Act collectives, Robert Conrey told the court that servers and bartenders for 411 South Bar and Grill were unified by their experiences of working under illegal pay policies. A court-sanctioned collective action is necessary to bring the full scope of their employer's alleged misdeeds to light, he argued.

"Defendants uniformly applied their tip policy to every member of the waitstaff regardless of whether they were a server or bartender," Conrey said. "Plaintiffs and all other servers and bartenders employed at the restaurant within the past 3 years are unified by a common theory of FLSA violations."

Conrey, who worked as both a waiter and a bartender over the course of his employment at 411 South, alleged in a May 2 complaint that **management withheld** part of all tips. In an amended complaint filed May 11, Conrey added accusations that the restaurant underpaid its staff for overtime work.

On Wednesday, Conrey told the court that despite the differing job titles, bartenders and servers were similarly situated. Citing his own experiences working with both roles and testimony of two co-workers who agreed to opt into the action, Conrey said servers and bartenders alike provided customers with food and drink, worked overtime hours for which they were improperly compensated and received improperly deducted tips.

The uniformity of his and his co-workers' duties and their allegations of widespread and universally applied FLSA violations is sufficient to proceed with collective claim certification, Conrey said.

Conrey also said that more current and former 411 South employees are itching to take action against their employer, if they are given the chance. Conrey told the court that he and his two fellow opt-in plaintiffs knew personally of other workers who, for fear of retaliation by 411 South, would not seek justice for themselves unless provided notice of a collective action.

"These concerns are particularly noteworthy because Conrey, himself, was terminated when defendants found out that plaintiff sought to vindicate his rights under the FLSA," Conrey said, citing allegations raised in his complaint.

In the event of an order of conditional certification, Conrey is asking 411 South for a list of names and contact information for all waitstaff and bartenders who worked at the restaurant in the prior three years. Because of the alleged uniformity of 411 South's pay policies, all are entitled to notices of both the tip deduction and overtime pay collectives, he said.

Recipients of the notices would be given 60 days to opt into either or both of the proposed FLSA collectives.

Jordan Richards, counsel for Conrey, said in a statement Tuesday that more workers were likely to join his client's suit.

"Based on the number of individuals who worked at the restaurant and have already come forward, we believe there is a sufficient basis for others affected by these allegations to join this lawsuit, and we look forward to representing them," Richards said.

Representatives of 411 South did not respond to a request for comment.

Conrey is represented by Jordan Richards of Jordan Richards PLLC.

Counsel information for 411 South was not available.

The case is Conrey v. Beach Boys of Fort Lauderdale LLC et al., case number 0:22-cv-60843, in the U.S. District Court for the Southern District of Florida.

--Editing by Abbie Sarfo.

Update: This article has been updated with comment from Richards.

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