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Chicago Eateries Accused Of Scamming Servers On Earnings

By **Joyce Hanson**

Law360 (July 31, 2018, 2:14 PM EDT) -- Chicago restaurant management company Four Corners got smacked with a labor lawsuit by a proposed class of servers claiming the owner of a slew of popular establishments has routinely scammed them out of their earnings via a tip and tax scheme.

The proposed collective and class action brought by former bartender Erik Luna and removed to Illinois federal court Monday names 17 Chicago spots such as Sidebar Grille in the city's law office district and pizza joint Ranalli's in Lincoln Park, claiming Four Corners operators Matthew Menna and Andrew Gloor and their bars and restaurants are responsible for paying them their wages in nightly cash tips that are not accurately reflected in their biweekly pay stubs.

Luna's suit originally filed July 19 in the Circuit Court of Cook County alleges violations of the federal Racketeer Influenced and Corrupt Organizations Act and the Fair Labor Standards Act as well as Illinois and Chicago wage laws. He claims that the take-home cash tip wages that he and hundreds of other tipped servers received actually came to less than the minimum wage established by the FLSA because Four Corners' scheme deprived them of a portion of their tips every night.

For example, Luna alleged, his pay stub for the period of March 22 through April 4, 2017, stated his cash tip earnings totaled \$2,850, even though his take-home cash for that same period as calculated in the Aloha point-of-sale software system came to only \$2,437 — a difference of \$413.

"In principle, the value of cash tips reflected on servers' pay stubs should uniformly reflect the total amount of tips that were bestowed upon servers by defendants' customers, the total amount of tips that servers declared in defendants' point-of-sale system and servers' take-home cash, as these values should be coextensive," Luna's complaint said. "However, in actuality, the amount of cash tips reflected on servers' paystubs is greater than the amount of take-home cash that servers were given, and allowed to keep, and the total amount of tips that they declared in defendants' POS system."

From approximately April 2011 until June 2018, while he worked as a bartender at the Four Corners-owned Benchmark Bar and Grill, Luna said he saved all of his nightly receipts and eventually started to compare them to his biweekly pay stubs, even though he didn't receive a paycheck at the end of each period because his entire hourly compensation was usually withheld for tax purposes since he earned his money in tips.

But Luna started to pay closer attention to the amount of cash tips noted on his pay stubs because they were used to calculate his annual income on his W-2s, according to the lawsuit. That's when he recognized an unusual pattern showing a discrepancy between the larger amount of cash tips stated on his pay stubs and the smaller amount of take home cash that he was actually paid, the suit said.

Luna brought the discrepancy to the attention of other servers, who also started tracking their pay and realized their biweekly stubs and nightly cash tip numbers were not the same, according to the suit, which states that the precise reason for this discrepancy is not yet known.

"Something is wrong," Thomas A. Zimmerman Jr., a lawyer representing Luna, told Law360 on Tuesday. "One of two things is happening. Either the employer is not paying him all of the tips that he is owed or, if the pay stub is wrong and he's really only entitled to the smaller amount, then

they're overstating his income and he's paying income tax on money he never received because that income goes into his W-2. We're taking Four Corners to court to find out what's going on."

Last week in in the Circuit Court of Cook County, Luna's counsel filed an emergency motion for a preservation order.

"We wanted the courts to enter an order to force all of the restaurants to preserve all of these employee wage and hour records, including their tips, from the Aloha system," Zimmerman said.

The circuit judge was going to enter the preservation order on Monday, but 15 minutes before he entered that order, the defendants' counsel moved the case to federal court, according to Zimmerman, who said the plaintiff will now seek the same order from the federal judge.

Representatives for Four Corners could not be reached immediately for comment on Tuesday.

Legal counsel for Four Corners did not respond to a request for comment.

Erik Luna is represented by Thomas A. Zimmerman Jr., Sharon A. Harris, Matthew C. De Re and Nickolas J. Hagman of Zimmerman Law Offices PC.

The restaurants are represented by Daniel W. Tarpey and Matthew Showel of Tarpey Wix LLC.

The case is Erik Luna v. 4C Kinzie Investor LLC d/b/a Highline Bar & Lounge et al., case number 1:18-cv-05165, in the U.S. District Court for the Northern District of Illinois.

--Editing by Pamela Wilkinson.