

Purveyor Of World's Priciest Burger Hit With Wage Suit

By Braden Campbell

Law360, New York (March 10, 2016, 12:03 PM ET) -- A former server at a Manhattan restaurant known for its extravagant menu items hit his employer with a proposed collective action in New York federal court on Thursday, claiming the purveyor of the world's most expensive cheeseburger couldn't cough up fair wages. Server Irwing Velandia said Serendipity 3, known for its Guinness World Record-holding cheeseburger and ice cream sundae costing \$295 and \$25,000 respectively, and owner Stephen Bruce did not properly notify employees he would apply a tip credit to their wages, forced them to share tips with nontipped employees, and failed to pay wages — both regular and overtime — in line with federal and New York City mandates.

Velandia claimed Thursday that Serendipity 3, which has been featured in films such as "Serendipity," "Trust the Man" and "One Fine Day," paid its servers, bussers and other employees who regularly receive gratuities at a "tipped" minimum wage, but violated requirements for applying a tip credit, which allows employers to pay employees at a wage below the minimum if it's offset by tips.

According to Velandia, the restaurant forced employees to give nontipped ice cream scoopers \$10 or \$20 per shift depending on which section he worked, which he calls an illegal tip pool under the Fair Labor Standards Act and the New York Labor Law. He further claims tipped employees were required to perform unpaid off-the-clock work before and after each shift, including requiring them to perform paperwork after their shifts end.

The complaint further alleges Serendipity 3 required its tipped employees to spend more than 20 percent of their on-the-clock hours performing nontipped tasks including restocking condiments and preparing table setups.

Velandia also claims the restaurant did not pay its employees time-and-a-half for hours worked over 40 despite regularly requiring employees to work overtime, made employees pay out of their own pockets to launder their mandatory uniforms, and docked tipped employees' wages when customers walked out or the cash register was short.

A general manager at the restaurant told Law360 on Thursday the restaurant does not and has never run an illegal tip pool, only requiring its employees to share gratuity with bussers. Bruce was not available for comment.

Velandia proposes to notify a collective of more than 20 current and former tipped employees at Serendipity 3 who worked at the restaurant in the three years before he filed his suit. He asks that the court enjoin future violations of the FLSA and NYLL and award unpaid wages, damages, notice penalties, interest and attorneys' fees. The complaint does not estimate the payout, but indicates penalties for failures to properly notify employees of their wages under the NYLL would be \$2,500 per employee, plus fees and costs.

The suit is one of several such actions that have been launched against well-known New York restaurants, according to the plaintiffs' attorney, Louis Pechman of the Pechman Law Group PLLC.

"Virtually all of the iconic New York City restaurants have been hit with wage lawsuits," Pechman said.

Pechman himself has been involved in several, including pending suits against upscale French eatery Le Perigord and Frank Sinatra favorite Patsy's Italian Restaurant. He settled another suit against Sparks Steak House, the site of a hit ordered by notorious mobster John Gotti, in 2009 for \$3.15 million.

Velandia is represented by Louis Pechman and Vivianna Morales of Pechman Law

Group PLLC.

Attorney information for Bruce and the restaurant was not available Thursday.

The case is Irwing Velandia et al. vs. Serendipity 3, INC. et al., case number [1:16-cv-01799](#), in the U.S. District Court for the Southern District of New York.

--Editing by Rebecca Flanagan.