

[waiters] Atlanta waiters sue: tip-sharing to fund restaurant's 'incidental labor fund' [Atlanta, GA 9.2.04]

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By John Kessler

ATLANTA [Sept. 2] - One of Atlanta's marquee restaurants was named in a federal lawsuit filed Wednesday by a group of its current and former employees.

Waiters allege that Joel Restaurant withheld a portion of their tips to stash in an 'incidental labor fund' to compensate dishwashers, glass polishers, marketing staff and managers — even those on vacation.

'We feel the owners and managers manipulate the tip-out system beyond the limits of labor law,' said waiter Robert Bryant, 'shifting an unfair burden of the restaurant's . . . expenses onto the servers.' The servers are asking for the tips, lost wages and damages.

The suit filed in U.S. District Court in Atlanta names Joel Antunes, the restaurant's star chef, and Ronus Properties, the real estate firm that owns the Buckhead property, Piazza at Paces, where Joel is located.

Joel General Manager Nicolas Sangros declined to comment, as he had not seen the complaint.

Since its 2001 opening, Joel has garnered national attention for its accomplished French cuisine, wine program and contemporary design. The year it opened, Esquire magazine declared it one of America's best new restaurants. This year, chef Antunes was nominated by the James Beard Foundation for Best Chef in the Southeast.

Since its opening, Joel has also been under fire for its handling of employee tips. Early on, when management took \$500 from the tips to pay for broken plates and glasses, employees complained loudly. It was a one-time occurrence, said then-manager Frederic Serol.

Like many upscale restaurants, Joel has operated as a 'pool house.' Management has required waiters to put all their tips into the evening's kitty, ostensibly to divide it among all staffers who come into contact with customers. Over the years it has modified its tip-out formula, but all waiters

are still required to leave a hefty fraction of their accumulated tips — 36 percent according to the lawsuit — to reward other service providers.

Bryant and the others claim that management went too far. It wasn't, they allege, just the payout that went to glass polishers and the managers, who are not supposed to get any tips under federal law.

'We [had] no idea where our tips [were] going. That's . . . what happens when our tips go through our employer's computer. It's all too tempting.'

Whenever anyone complained about the system, Bryant said, 'management provided no answers, gave vague answers, threatened us with termination or told us to work elsewhere.'

Like most restaurants, Joel takes a 'tip credit' on its payroll. Instead of paying waiters and bussers the federally mandated \$5.15/hour minimum wage, it pays \$2.13/hour, arguing that tips should count as wages.

The plaintiffs' lawyer, Shannon Liss-Riordan, asserts that the law — in this case, the Fair Labor Standards Act — is very specific about what a restaurant may or may not do under the tip credit. Managers can't receive a portion of the tips, 'even if they assist with service.' Further, she said, the employer may not charge the tipped employees for breakage, for their uniforms or for customers who leave without paying their bill. The plaintiffs say they were asked to pay in each case.

Liss-Riordan is arguing that the employees are not only entitled to their tips, but also to double the difference between the hourly wages they were paid and minimum wage; that would amount to about \$6 per hour per waiter.

Liss-Riordan has brought 20 such actions in Boston, where she practices law. None of the cases have gone to trial; she has settled seven cases out of court. The others are in discovery, awaiting pre-trial rulings or in settlement discussions.

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