

## **Suit alleges Upper Crust took back workers' pay**

By Jenn Abelson, Globe Staff

Two former cooks at Upper Crust pizza today filed a lawsuit that accuses the popular chain of taking back thousands of dollars in overtime payments that were ordered by the US Department of Labor following an investigation into the company's compensation practices.

The lawsuit, which seeks class action status, comes nearly a year after Upper Crust paid more than \$341,000 in back wages to about 121 workers for uncompensated overtime, following a US Department of Labor investigation, according to John Chavez, a spokesman for the agency. The chain has 17 restaurants in the Boston area.

Valdeir Pereira Pinto, of Allston, and Cleverson Batista, of Somerville, contend Upper Crust management, after making the lump restitution payments for overtime, told employees they would have to pay it back if they wanted to keep their jobs. Management then began deducting hundreds of dollars from their weekly checks, according to a copy of the suit filed in Suffolk Superior Court. Pinto and Batista, both immigrants from Brazil, said in court papers that they were fired this spring weeks after the company recovered its money.

"It's not fair that the guys take my money. I work for this money," Batista, who worked at restaurants in Brookline and Boston's Fenway neighborhood, said in an interview.

Josh Huggard, one of Upper Crust's owners, said the chain "learned from its mistakes in the past" regarding the Department of Labor investigation into its overtime payment practices. But Huggard said the company "never ever said [employees] couldn't work for us or that they had to pay us back."

Huggard, said Pinto, who worked at Upper Crust on Commonwealth Avenue in Boston, was fired more than a year ago because "he was lazy. He was an awful worker." But paychecks provided by Batista's attorneys show he received checks through April of this year.

The federal investigation, which looked at pay practices from April 2007 through April 2009, showed that Upper Crust hourly workers were paid straight time even after they exceeded 40 hours in a week. Pinto, for example, received two checks for the week ending Jan. 5, 2008, earning \$400 at \$10 an hour for the first 40 hours, and \$305 for an additional 30.5 hours, according to copies of paychecks provided by his lawyers.

A time card from the week ending Sept. 27, 2009, a month after the overtime restitution, show Pinto worked 72 hours. That week, however, he received only one check for \$455, without a breakdown of hours worked. He made the same amount for the week ending December 6, 2009, according to records supplied by his lawyers, even though he worked longer -- 80.50 hours.

Jordan Tobins , one of the chain's owners and a defendant in the lawsuit, described Pinto and Batista as "disgruntled ex-employees" who "have been trying to figure out a way to extort money from our business." He wrote in an email to the Globe that their time sheets are not an accurate representation of hours worked and that they were both salaried employees starting in August 2009 .

"We don't really care what the hours said on the time report, since they are salaried, and not hourly employees," Tobins wrote in an email.

The lawsuit alleges Upper Crust made improper deductions from the employees' wages, failed to pay the required minimum wage, and also retaliated against those who complained. Batista and Pinto said they were fired for protesting the deductions shortly after the chain had recouped the full payments -- roughly \$10,000 each -- ordered as a result of the Labor Department investigation.

Jordan Tobins , one of the chain's owners and also a defendant in the lawsuit, wrote in an email to the Globe that pay rates were scaled back in August 2009 because of "our need to reduce payroll. We explained that it was unfortunate, but in order to keep all the guys we had, that was our only option. Our payroll had risen beyond the acceptable percentage for a restaurant, and in order to keep growing, we needed to get things back in check!"

Upper Crust opened at least three new stores last year. Pinto and Batista said they stayed with the company despite the alleged wage deductions because they worried about finding another job in a down economy.

"They were opening stores with my money," Pinto said in an interview. "I want my money back."

Tobins said an investigator at the Department of Labor "helped guide us through the legal way to reduce payroll and the need for overtime."

Chavez, the US Department of Labor spokesman, said that was not the case.

"The wage and hour division is not in the business of advising employers how to reduce their payroll," he said. "They are in the business of making sure employers pay their employees properly under the law."