

## Sweet Shop Workers Win Collective Cert. In Tips Suit

By **Irene Spezzamonte**

Law360 (September 8, 2021, 1:06 PM EDT) -- A group of workers for two North Carolina dessert shops can move forward as a collective in their lawsuit claiming the companies failed to pay them the tips earned through electronic payments, a federal judge ruled.

U.S. District Judge Frank D. Whitney on Tuesday certified a collective of tipped workers for Smallcakes Steele Creek LLC and Smallcakes Ballantyne LLC. The workers claimed they received only the tips customers left in cash and not the ones left through credit or debit payments, in violation of the Fair Labor Standards Act and North Carolina Wage and Hour Act.

The collective will include all current and former nonexempt hourly employees employed by the companies from June 16, 2018, to the present.

The order comes after Angela Hathaway, who sued the companies on behalf of her minor daughter, said in August in a motion for collective certification that the companies' policy to give their tipped workers only the gratuities customers left in a tip jar applied to all employees and resulted in a common injury.

The companies did not object to certifying the collective, but disagreed with some language included in the proposed notice to the opt-ins, including details about the effect of joining the lawsuit and attorney fees and costs, according to the order.

Hathaway filed the lawsuit in June, claiming the companies failed to provide their tipped employees with the tips left via electronic payments, which represented the majority of the gratuities customers left.

Hathaway further alleged that once her daughter, who started working as a cashier at Smallcakes Ballantyne in January, complained about the policy to one of the store's owners, Ian Bowleg, she saw her work week cut from 20 hours to five, according to the complaint.

Bowleg, who with his wife, Ayanna, owns both Smallcakes Steele Creek and Smallcake Ballantyne, told Hathaway's daughter that "when Smallcakes is out of debt and making money, he would consider paying employees their earned tips again," the complaint said.

In her complaint, Hathaway also seeks to represent a class of workers under the North Carolina Wage and Hour Act.

L. Michelle Gessner of GessnerLaw PLLC, who represents the collective, said she is "pleased with the court's ruling" and that most of the collective members will be minor girls.

An attorney representing the companies and their owners did not immediately respond to a request for comment Wednesday.

Ian Bowleg also did not immediately respond to a request for comment Wednesday.

The collective is represented by L. Michelle Gessner and Nicole K. Haynes of GessnerLaw PLLC.

Smallcakes Steele Creek LLC and Smallcakes Ballantyne LLC and their owners are represented by Amy Y. Jenkins of McAngus Goudelock and Courie LLC.

The case is Hathaway v. Smallcakes Steele Creek LLC et al., case number 3:21-cv-00290, in the U.S. District Court for the Western District of North Carolina.

--Editing by Roy LeBlanc.

---

All Content © 2003-2021, Portfolio Media, Inc.