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Employees file a class action lawsuit against Kelly's Brew Pub and Restaurant for violating the Albuquerque Minimum Wage Ordinance.

Kelly's Brew Pub and Restaurant and its owners Dennis and Janice Bonfantine unlawfully helped themselves to their servers' tips and didn't pay servers for some of the time they worked, according to a lawsuit filed today in Albuquerque district court.

The class action complaint, filed on behalf of seven current and former employees, accuses the Bonfantines and Kelly's of violating the Albuquerque Minimum Wage Ordinance (the Albuquerque MWO).

The lawsuit contends that after a November 2012 ballot initiative raised the Albuquerque minimum wage, Kelly's and the Bonfantines "settled on an unlawful response to the minimum wage increase: servers would pay for it themselves, out of their tips. Starting in 2013, Defendants increased the wage rate that appeared on servers' paychecks so that Defendants appeared to comply with the new law, but required servers to pay the house cash each shift, calculated at 2% of their total daily sales, plus \$3.00 per hour they worked on the clock. After tipping out, servers sometimes owed more in cash than they had actually earned in cash tips during the shift. When this happened, servers were required to pay the difference from their wallets or their paychecks. When questioned about this 'tip out' policy, the Bonfantines and managers explained that Kelly's needed the money to pay for the minimum wage increase and other business expenses."

Furthermore, according to the lawsuit, "Kelly's did not pay servers all of their customers' credit card tips, and instead kept a portion of those tips for themselves. Kelly's also did not pay servers any wages at all for non-tipped work they performed off-the-clock, such as rolling silverware, kitchen prep, and awaiting table assignments."

The Albuquerque Minimum Wage Ordinance – which the voters approved in a November 2012 ballot initiative – prohibits these practices. The ordinance raised the minimum wage for tipped workers from \$2.13 an hour to \$3.83 an hour in 2013, and \$5.25 per hour in 2014 and afterwards, with annual adjustments for the cost of living. Under the ordinance, tipped employees must be allowed to keep all of their tips, and employers cannot require employees to share their tips with the house or with management. The ordinance does not prohibit tip pooling among employees who receive tips, but by law management cannot participate in a tip pool. The ordinance also requires employers to pay employees the minimum wage for all hours worked, whether on the clock or off. Non-tipped employees are currently entitled to \$8.75 per hour under the ordinance.

The plaintiffs are represented by attorneys at the New Mexico Center on Law and Poverty and Youtz & Valdez, P.C. The attorneys will seek to have the lawsuit certified as a class action to recover servers'

misappropriated tips, minimum wages, statutory liquidated damages, pre- and post-judgment interest, injunctive relief, costs and expenses of suit, and reasonable attorney's fees

Elizabeth Wagoner, a staff attorney at the Center on Law and Poverty, stated, "A worker simply cannot live on two dollars an hour, especially when she can't keep all of her tips and doesn't get paid at all for some work time. This shouldn't be happening anymore in Albuquerque, but the situation at Kelly's shows that a strong minimum wage ordinance also needs strong enforcement. We applaud our partners at Youtz & Valdez for taking on this important case, and urge the Albuquerque City Attorney to engage in proactive enforcement efforts to root out other lawbreaking employers."

Shane Youtz, a partner at Youtz & Valdez, P.C., stated, "Employers need to understand that there are real consequences to undercutting Albuquerque's minimum wage law. Pay practices like Kelly's simply aren't lawful, and our firm has a long-standing commitment to fight for workers' rights in cases like these."

The case is *Atyani et al v. Bonfantine et al* in the Second Judicial District Court in Albuquerque, NM. A copy of the complaint is available at www.nmpovertylaw.org.