

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

HILARY YEAW and BRENDAN McADAM,
on behalf of themselves and all others similarly
situated,

Plaintiffs,

v.

BARBARA LYNCH COLLECTIVE, INC.,
550 TREMONT LLC, 348 CONGRESS, LLC,
and BARBARA LYNCH, individually,

Defendants.

Case No. _____

CLASS ACTION COMPLAINT & JURY DEMAND

1. Plaintiffs Hilary Yeaw and Brendan McAdam (together, “Plaintiffs”) bring this class action on behalf of themselves and all others similarly situated alleging that Defendants Barbara Lynch Collective, Inc. (“BLC”), 550 Tremont LLC (“550 Tremont”), 348 Congress LLC (“348 Congress”), and Barbara Lynch (collectively, “Defendants”) have violated the Massachusetts Tips Act, M.G.L. c. 149, § 152A, and the minimum wage provision of the Massachusetts Minimum Fair Wage Law, M.G.L. c. 151, §§ 1 and 7, by failing to remit all tips to wait staff employees at their restaurants in Boston.

Jurisdiction & Venue

2. The Superior Court has jurisdiction over this action pursuant to G.L. c. 212 § 3, because this is a civil action for money damages where there is no reasonable likelihood that Plaintiffs will recover an amount less than or equal to \$50,000.00.

3. Venue is proper in Suffolk County pursuant to G.L. c. 223 § 1 because BLC's usual place of business is located in Boston, Massachusetts, and because the conduct giving rise to this action occurred in Boston, Massachusetts.

The Parties

4. Plaintiff Hilary Yeaw is an adult individual residing in Providence, Rhode Island.

5. Plaintiff Brendan McAdam is an adult individual residing in Boston, Massachusetts.

6. Defendant Barbara Lynch Collective, Inc., is a Massachusetts domestic for-profit corporation, with a principal office at 550 Tremont Street in Boston, Massachusetts 02116.

7. Defendant 550 Tremont LLC is a Massachusetts domestic for-profit limited liability company, with a principal office at 319 A Street in Boston, Massachusetts 02210.

8. Defendant 348 Congress LLC is a Massachusetts domestic for-profit limited liability company, with a principal office at 319 A Street in Boston, Massachusetts 02210.

9. Defendant Barbara Lynch is an individual residing in Massachusetts. Ms. Lynch is the president, secretary, treasurer, and director of BLC, and the manager of both 550 Tremont and 348 Congress.

Factual Background

10. BLC is a privately held company owned and operated by Barbara Lynch.

11. BLC functions as a parent or management company that centrally operates several restaurants in Boston, known as the “Barbara Lynch Collective,” through certain subsidiary companies, including (*inter alia*) 550 Tremont and 348 Congress.

12. BLC operates a website for the Barbara Lynch Collective of restaurants at <https://www.barbaralynch.com>. On that website, BLC portrays its restaurants as different “concepts” of the Barbara Lynch Collective and its president, Ms. Lynch.

13. At all times relevant to this Complaint, and on information and belief, Barbara Lynch has retained and exercised control over the daily operations of BLC, including developing, implementing, and approving hiring and firing decisions; policies and procedures governing employment and employee compensation; and standards and practices for employees’ work.

14. The restaurants that comprise the Barbara Lynch Collective include B&G Oysters, located at 550 Tremont Street; the Butcher Shop, located at 552 Tremont Street; Drink, located at 348 Congress Street; Menton, located at 354 Congress Street; No. 9 Park, located at 9 Park Street; and Sportello, located 348 Congress Street.

15. Both directly and indirectly through its subsidiaries, BLC operates, controls, oversees, and directs employment matters and general business operations for the Barbara Lynch Collective. Such matters include, *inter alia*:

a. creating, implementing, and controlling payroll policies, including determining and setting the rate and methods of employee compensation;

- b. remitting wages and compensation, including issuing paychecks;
- c. creating and maintaining personnel files and employment records;
- d. arranging, implementing, or controlling work schedules;
- e. overseeing, directing, managing, or controlling employees in the performance of their duties; and
- f. hiring, training, disciplining, and firing wait staff employees.

16. BLC has employed numerous individuals, including Ms. Yeaw and Mr. McAdam, to work as wait staff at the Barbara Lynch Collective of restaurants identified in paragraph 14.

17. Defendants have paid the wait staff employees who work in the Barbara Lynch Collection of restaurants an hourly wage rate that was less than the Massachusetts basic minimum wage which, during the time period applicable to this case, was \$12.75 per hour.

18. BLC and 550 Tremont employed Ms. Yeaw as a server at B&G Oysters from 2010 to 2021. During the time period applicable to this case, Defendants paid Ms. Yeaw an hourly wage rate that was less than the Massachusetts basic minimum wage.

19. BLC and 348 Congress employed Mr. McAdam as a bartender at Drink from 2019 to 2021. During the time period applicable to this case, Defendants paid Mr. McAdam an hourly wage rate that was less than the Massachusetts basic minimum wage.

20. The COVID-19 pandemic caused all restaurants and bars in Boston to close in March 2020. As a result of that closure, BLC furloughed the wait staff employees at all the Barbara Lynch Collective of restaurants.

21. During the pandemic, BLC, through its subsidiary companies such as 550 Tremont and 348 Congress, applied for and received Paycheck Protection Plan (“PPP”) loans by the United States Treasury Department.

22. 550 Tremont, for example, received a total of about \$888,974 in PPP loans, while 348 Congress received a total of about \$1,340,103 in PPP loans.

23. In June 2020, restaurants and bars in Boston were allowed to reopen on a limited basis.

24. In May and June 2020, BLC sent a letter to its wait staff employees, including Plaintiffs, recalling them to work. The letter stated that BLC had “suspended the tip pool through the duration of the PPP assistance.” It further stated:

You will be paid the same bi-weekly average gross wage whether you work a full 40 hours, 20, or none at all. Any tips guests choose to leave are being used to continue the Employee Food & Supply Pickups on Thursdays which you are welcome to attend.

25. Throughout May and June 2020, customers continued paying tips to the wait staff employees at BLC’s restaurants. However, BLC did not remit those tips to the wait staff employees.

26. Instead, throughout May and June 2020, BLC paid its wait staff employees fixed amounts based on their average gross bi-weekly wages using PPP funds.

Administrative Filing

27. Plaintiffs' counsel have filed Plaintiffs' statutory claims with the Fair Labor Division of the Massachusetts Attorney General's Office.

Class Allegations

28. Plaintiffs bring this action pursuant to Massachusetts Rule of Civil Procedure 23 on behalf of themselves and all other individuals whom Defendants have employed as wait staff employees at any and all of the Barbara Lynch Collective of restaurants in Boston, Massachusetts, during the relevant limitations period.

29. On information and belief, all such individuals have been subject by BLC to uniform policies and practices concerning, among other things, the services they perform, their compensation, the hours they worked, and remission, distribution, and/or retention of tips paid by customers.

30. Joinder is impracticable in this case due to the size and composition of the class, and nature of the claims and relief sought, the remedial purpose of the underlying claims, and because individual joinder would be inefficient, uneconomical, and could result in the deprivation of wage rights to aggrieved employees.

31. Common questions of law and fact exist as to the proposed class and predominate over any questions affecting only individual members. The predominant questions of law

or fact are clear, precise, well-defined, and applicable to Plaintiffs as well to every member of the proposed class.

32. Plaintiffs' claims are typical of the claims of the members of the proposed class he seeks to represent, as all members of the class were subject to the same unlawful practices and suffered similar harms.

33. Plaintiffs will fairly and adequately represent the interests of the class because they do not have a conflict of interest with the class members.

34. Plaintiffs have retained counsel competent and experienced in class actions and wage and hour litigation who will fairly and adequately represent the class members' interests.

35. A class action is superior in this case for multiple reasons including, but not limited to, the following: the case challenges BLC's uniform compensation practices and policies; workers may be reluctant to bring claims individually for fear of retaliation; workers may not have the motivation or resources to bring their claims individually; and it would be an inefficient use of scarce judicial resources to require each employee affected by the practices challenged herein to bring his or her own individual claim.

Count I

Massachusetts Tips Act
M.G.L. c. 149, § 152A

36. Plaintiffs incorporate the above paragraphs as if fully stated herein.

37. By failing to remit all tips received from customers to their wait staff employees, including Plaintiffs, Defendants violated the Massachusetts Tips Act, M.G.L. c. 149, § 152A, and are liable for treble damages, interest, and reasonable attorneys' fees and costs.

38. Plaintiffs bring this claim pursuant to M.G.L. c. 149, § 150.

Count II

Massachusetts Minimum Fair Wage Act

M.G.L. c. 151, §§ 1 and 7

39. Plaintiffs incorporate the above paragraphs as if fully stated herein.

40. By paying their wait staff employees an hourly wage rate that was less than the Massachusetts basic minimum wage while also failing to remit all tips received from customers to those wait staff employees, Defendants have violated the minimum wage provision of the Massachusetts Minimum Fair Wage Act, M.G.L. c. 151, §§ 1 and 7, and are liable for treble damages, interest, and reasonable attorneys' fees and costs.

41. Plaintiffs bring this claim pursuant to M.G.L. c. 151, § 20.

Jury Demand

42. Plaintiffs requests a trial by jury on all claims.

Prayer for Relief

43. WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

- a. Certification of this case as a class action pursuant to Rule 23;
- b. Restitution for all tips that Defendants failed to remit to Plaintiffs and the proposed class members;
- c. Restitution for the full Massachusetts basic minimum wage for all hours worked;

- d. Statutory trebling of damages;
- e. Pre- and post-judgment interest;
- f. Attorney fees and costs; and
- g. Such other and further relief as the Court may deem proper and just.

Respectfully submitted,

HILARY YEAU and BRENDAN McADAM,
on behalf of themselves and all others
similarly situated,

By their attorneys,

/s/ Hillary Schwab
Brant Casavant, BBO #672614
Hillary Schwab, BBO #666029
FAIR WORK P.C.
192 South Street, Suite 450
Boston, MA 02111
Tel. (617) 607-3261
Fax. (617) 488-2261
brant@fairworklaw.com
hillary@fairworklaw.com

/s/ Lou Saban
Lou Saban, BBO#672089
P.O. Box 120693
Boston, MA 02112
(617) 784-2071
lou@sabanlegal.com

Dated: March 28, 2023.