

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

Superior Court
Civil Action No.

06-1622

CAROLINE FRYE,
and all others similarly situated,

Plaintiff,

v.

COLUMBIA SUSSEX CORPORATION and
CS HOTELS LIMITED PARTNERSHIP,
d/b/a/ HILTON BOSTON/WOBURN,

Defendants.

JURY DEMANDED

2966A000012/29/06CIVIL	240.00
2966A000012/29/06SUR CHARGE	15.00
2966A000012/29/06SECC	20.00
2966A000012/29/06SUMMONS	10.00

FILED
IN THE OFFICE OF THE
CLERK OF COURTS
FOR THE COUNTY OF MIDDLESEX
DEC 29 2006
Edward Sullivan
CLERK

2967A000012/29/06	240.00
2967A000012/29/06	240.00

COMPLAINT

I. INTRODUCTION

1. This is a class action brought on behalf of servers, bussers, and bartenders in the banquet department at Defendants' hotel, for the Defendants' failure to distribute the full proceeds of service charges to its employees as required by law. The Plaintiff alleges that the Defendants violated Mass. Gen. L. c. 149 § 152A and Mass. Gen. L. c. 151 §§ 1 and 7 and that the Defendants are also liable under Massachusetts common law for quantum meruit, interference with contractual and/or advantageous relations, breach of implied contract, breach of the covenant of good faith and fair dealing, conversion, and unjust enrichment.

2. In this action, the Plaintiff now seeks restitution for herself and all other employees who have not been allowed to retain the customer gratuities to

which they are entitled and who have been unlawfully paid less than the minimum wage (since the Defendants are not eligible for the "tip credit"). The Plaintiff also seeks statutory trebling of damages, attorneys' fees, and costs, all as provided for by law.

II. PARTIES

3. Plaintiff Caroline Frye is an adult resident of Wilmington, Massachusetts. Since January 1998, Ms. Frye has been employed as a banquet bartender at the Crowne Plaza Boston-Woburn in Woburn, Massachusetts.

4. The above-named plaintiff brings this action on her own behalf and on behalf of all others similarly situated, namely all other employees who have not received the wages to which they are entitled, as described below.

5. Defendants Columbia Sussex Corporation and CS Hotels Limited Partnership own and operate the Hilton Boston/Woburn, formerly the Crowne Plaza Woburn-Boston, located at Two Forbes Road in Woburn, Massachusetts.

III. STATEMENT OF FACTS

6. The Defendants add a service charge to all bills for private parties.

7. This service charge is typically 21-22% of the total food and beverage bill.

8. However, the Defendants do not remit the total proceeds of this service charge to employees who serve the food or beverages.

9. Instead, the Defendants have a policy and practice of retaining for itself, and/or distributing to management, or other employees who do not serve food or beverages, a portion of the service charge. The Defendants typically only

distribute 12% of the 21-22% service charge to the employees who serve the food or beverages.

10. The proceeds of the service charge are not remitted to employees in proportion to the service provided by them.

11. As a result of the Defendants' actions in not remitting the total proceeds of service charges to employees providing service of food or beverages and in proportion to the service provided by them, these employees have been deprived of payments to which they are entitled.

12. Many of Defendants' employees receive or have received no base hourly pay at all or have received an amount that is less than the minimum wage.

13. Because the Defendants' employees have not been permitted to retain all of their gratuities, the Defendants have not been eligible to claim the "tip credit" against the minimum wage.

14. In addition, Defendant did not comply with its obligation to inform the waitstaff that it was taking the tip credit and give them proper notice of the law as it was required to do.

IV. EXHAUSTION OF ADMINISTRATIVE REMEDIES

15. Pursuant to the state law requirements as set forth in Massachusetts General Law Chapter 149 § 150, Plaintiff filed her statutory claims with the Office of the Attorney General and has received a right to sue letter in order to proceed on her claims in court.

COUNT I

MASSACHUSETTS GENERAL LAW CHAPTER 149 § 152A

Defendants' conduct, as set forth above, violates Mass. Gen. L. c. 149 § 152A. This claim is brought pursuant to Mass. Gen. L. c. 149 § 150.

COUNT II

FAILURE TO PAY MINIMUM WAGE IN VIOLATION OF STATE LAW

Defendants' knowing and willful failure to pay its employees the minimum wage and inappropriate claiming of the "tip credit," as set forth above, violates Mass. Gen. L. ch. 151 §§ 1 and 7.

COUNT III

QUANTUM MERUIT

Waitstaff employees are entitled to restitution for their full share of the proceeds of customer service charges under the state common law doctrine of quantum meruit.

COUNT IV

**INTENTIONAL INTERFERENCE WITH CONTRACTUAL AND/OR
ADVANTAGEOUS RELATIONS**

Defendants' conduct, as set forth above, in failing to remit the full customer service charges to waitstaff employees constitutes unlawful intentional interference with the implied contractual and/or advantageous relationship that exists between waitstaff employees and Defendants' customers, under state common law.

COUNT V

BREACH OF CONTRACT

Defendants' conduct, as set forth above, constitutes breach of an implied contract they have with waitstaff employees, under state common law. Under this implied contract, waitstaff employees provide service to Defendants' customers, and in return, Defendants are to remit to waitstaff employees the total service charge paid by Defendants' customers.

COUNT VI

BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING

Defendants' conduct, as set forth above, constitutes breach of the covenant of good faith and fair dealing under state common law.

COUNT VII

CONVERSION

Defendants' conduct, as set forth above, constitutes conversion under state common law.

COUNT VIII

UNJUST ENRICHMENT

Defendants' conduct, as set forth above, constitutes unjust enrichment under state common law.

JURY DEMAND

Plaintiff requests a trial by jury on all her claims.

WHEREFORE, Plaintiff requests that this Court enter the following relief:

1. Restitution for all service charges not properly distributed to employees;
2. Restitution for the portion of the minimum wage that Defendants did not pay their employees in base pay (*i.e.*, restitution for the "tip credit" the employer inappropriately claimed);
3. Statutory trebling of all damages;
4. Attorney's fees and costs;
5. Any other relief to which the employees may be entitled.

Respectfully submitted,

CAROLINE FRYE,
and all others similarly situated,

By her attorneys,



Shannon Liss-Riordan, BBO #640716
Hillary Schwab, BBO #666029
PYLE, ROME, LICHTEN, EHRENBERG
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Boston, MA 02108
(617) 367-7200

Dated: December 28, 2006

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

Superior Court
Civil Action No.

CAROLINE FRYE, CHERYL DUBOIS and
NOREEN MITCHELL,
and all others similarly situated,

Plaintiffs,

v.

COLUMBIA SUSSEX CORPORATION and
CS HOTELS LIMITED PARTNERSHIP,
d/b/a/ HILTON BOSTON/WOBURN,

Defendants.

06-4622

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AMENDED COMPLAINT

I. INTRODUCTION

1. This is a class action brought on behalf of servers, bussers, and bartenders in the banquet department at Defendants' hotel, for the Defendants' failure to distribute the full proceeds of service charges to its employees as required by law. The Plaintiffs allege that the Defendants violated Mass. Gen. L. c. 149 § 152A and Mass. Gen. L. c. 151 §§ 1 and 7 and that the Defendants are also liable under Massachusetts common law for quantum meruit, interference with contractual and/or advantageous relations, breach of implied contract, breach of the covenant of good faith and fair dealing, conversion, and unjust enrichment.

2. In this action, the Plaintiffs now seek restitution for themselves and all other employees who have not been allowed to retain the customer gratuities

to which they are entitled and who have been unlawfully paid less than the minimum wage (since the Defendants are not eligible for the "tip credit"). The Plaintiffs also seek statutory trebling of damages, attorneys' fees, and costs, all as provided for by law.

II. PARTIES

3. Plaintiff Caroline Frye is an adult resident of Wilmington, Massachusetts. Since January 1998, Ms. Frye has been employed as a banquet bartender at the Crowne Plaza Boston-Woburn in Woburn, Massachusetts.

4. Plaintiff Cheryl Dubois is an adult resident of Londonderry, New Hampshire. From August 2001 to April 2005 and again since June 2006, Ms. Dubois has been employed as a banquet bartender at the Crowne Plaza Boston-Woburn in Woburn, Massachusetts.

5. Plaintiff Noreen Mitchell is an adult resident of Burlington, Massachusetts. From October 2005 to October 2006, Ms. Mitchell was employed as a banquet server at the Crowne Plaza Boston-Woburn in Woburn, Massachusetts.

6. The above-named plaintiffs bring this action on their own behalves and on behalf of all others similarly situated, namely all other employees who have not received the wages to which they are entitled, as described below.

7. Defendants Columbia Sussex Corporation and CS Hotels Limited Partnership own and operate the Hilton Boston/Woburn, formerly the Crowne Plaza Woburn-Boston, located at Two Forbes Road in Woburn, Massachusetts.

III. STATEMENT OF FACTS

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12. The proceeds of the service charge are not remitted to employees in proportion to the service provided by them.

13. As a result of the Defendants' actions in not remitting the total proceeds of service charges to employees providing service of food or beverages and in proportion to the service provided by them, these employees have been deprived of payments to which they are entitled.

14. Many of Defendants' employees receive or have received no base hourly pay at all or have received an amount that is less than the minimum wage.

15. Because the Defendants' employees have not been permitted to retain all of their gratuities, the Defendants have not been eligible to claim the "tip credit" against the minimum wage.

16. In addition, Defendant did not comply with its obligation to inform the waitstaff that it was taking the tip credit and give them proper notice of the law as it was required to do.

IV. EXHAUSTION OF ADMINISTRATIVE REMEDIES

17. Pursuant to the state law requirements as set forth in Massachusetts General Law Chapter 149 § 150, Plaintiffs filed their statutory claims with the Office of the Attorney General and have received right to sue letters in order to proceed on their claims in court.

COUNT I

MASSACHUSETTS GENERAL LAW CHAPTER 149 § 152A

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COUNT II

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JURY DEMAND

Plaintiffs request a trial by jury on all their claims.

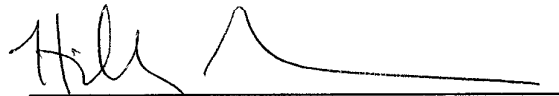
WHEREFORE, Plaintiffs request that this Court enter the following relief:

1. Restitution for all service charges not properly distributed to employees;
2. Restitution for the portion of the minimum wage that Defendants did not pay their employees in base pay (*i.e.*, restitution for the "tip credit" the employer inappropriately claimed);
3. Statutory trebling of all damages;
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Respectfully submitted,

CAROLINE FRYE, SHERYL DUBOIS,
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By their attorneys,



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Dated: December 29, 2006