

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX-----X  
YISET GUZMAN and MARLENY ESPINAL TAPIA,

Plaintiffs,

-against-

FOOD 2 LEX LLC, d/b/a MAIALINO RESTAURANT,

Defendants.  
-----X

Index No.

Plaintiffs designate BRONX  
COUNTY as the place of trial

## SUMMONS

The basis of the venue is:  
The county where the Plaintiffs  
are domiciled

PLEASE TAKE NOTICE THAT YOU ARE HEREBY SUMMONED to answer the complaint of the plaintiffs herein and to serve a copy of your answer on the plaintiffs at the address indicated below within 20 days after the service of this Summons (not counting the day of service itself), or within 30 days after service is complete if the Summons is not delivered personally to you within the State of New York.

YOU ARE HEREBY NOTIFIED THAT should you fail to answer, a judgment will be entered against you by default for the relief demanded in the complaint.

Dated: New York, New York  
October 21, 2015

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

-----X  
YISET GUZMAN and MARLENY ESPINAL TAPIA,

Plaintiffs,

COMPLAINT

-against-

Index No.

FOOD 2 LEX LLC, d/b/a MAIALINO RESTAURANT,

Defendants.

-----X

Plaintiffs Yiset Guzman (“Guzman”) and Marleny Espinal Tapia (“Tapia”) (collectively, “Plaintiffs”), by their attorneys, the Law Offices of Kevin Mintzer, P.C. and Cary Kane LLP, complaining of Defendant Food 2 Lex LLC d/b/a Maialino Restaurant (“Maialino” or “Defendant”), allege:

PRELIMINARY STATEMENT

1. Plaintiffs worked as food preparers at Maialino, an elite restaurant in the Gramercy Park section of Manhattan. Within a nine-month period, Plaintiffs were both unlawfully terminated after becoming pregnant and exercising their right to sick leave because of pregnancy-related illnesses. Accordingly, Plaintiffs bring this action under the New York City Human Rights Law (“NYCHRL”) to remedy discrimination on the basis of pregnancy, including the failure to accommodate Plaintiffs’ pregnancy-related medical conditions. N.Y.C. Admin. Code §§ 8-107(1)(a) & (22).

PARTES, JURISDICTION AND VENUE

2. Plaintiff Guzman is a resident of Bronx County in the State of New York.
3. Plaintiff Tapia is a resident of Bronx County in the State of New York.

4. Defendant Maialino is a Delaware limited liability company with its principal place of business in New York County. Defendant was Plaintiffs' employer within the meaning of the NYCHRL.

5. This Court has jurisdiction over Plaintiffs' NYCHRL claims pursuant to NYCHRL § 8-502. The amount in controversy exceeds the jurisdiction requirement of this Court.

6. Venue is proper within this County pursuant to CPLR § 503(a) because Plaintiffs reside in Bronx County.

### STATEMENT OF FACTS

#### Background

7. Plaintiffs are Spanish-speaking women who have limited proficiency in English.

8. Maialino hired both Plaintiffs in early May 2013. Guzman was hired as a food preparer. Tapia initially was responsible for unloading deliveries to the Restaurant and other related duties. However, after approximately two to three months of working at the Restaurant, she also became a food preparer. Plaintiffs were both paid slightly above minimum wage while working at Maialino.

9. At all relevant times, Jason Pfeifer ("Pfeifer"), the Chef de Cuisine at the Restaurant, supervised Plaintiffs.

10. Plaintiffs performed their duties well and received positive feedback for their work.

#### Facts Related to Guzman's Claims

11. Guzman became pregnant in January 2014.

12. Soon thereafter, she disclosed her pregnancy to her supervisors and colleagues at the Restaurant, including Pfeifer.



13. In or about the end of January 2014, Guzman began to experience significant nausea, dizziness, bleeding, and other pregnancy-related symptoms.

14. As a result, on or about February 1, 2014, Guzman had to visit the emergency room at St. Barnabas Hospital. Guzman was scheduled to work that day. Guzman's doctor ordered Guzman to remain on bed rest for a period of two weeks. The doctor gave Guzman a doctor's note, excusing her from work for two weeks beginning on or about February 1, 2014.

15. The same day, Guzman called the Maialino office, but no one at the office could translate for her. Guzman then called Jose Torres ("Torres"), a Spanish-speaking fellow employee, on his cell phone. Guzman told Torres that she would not be able to go to work because she did not feel well, and that she was bleeding due to her pregnancy. She told him that she had a doctor's note excusing her from work for two weeks, and that she would be sending her doctor's note via Ricardo Paulino ("Paulino"), a co-worker in the meat department. Torres said he would tell Pfeifer.

16. Before Guzman went to the emergency room, Tapia called Guzman to check in on her. Guzman told Tapia that she was going to the emergency room. Tapia then told Sous Chef Marco Calabro ("Calabro"), who was in charge at the Restaurant that day, that Guzman was unable to come to work due to her illness. Calabro reported to Pfeifer. Upon information and belief, Calabro understands some Spanish.

17. That same day, Guzman's husband visited Paulino and gave him Guzman's doctor's note. Paulino told Guzman that he delivered the note to Pfeifer the following day.

18. On or about February 14, 2014, Guzman was due to return to work. However, on that day she felt ill. Guzman felt nauseous, dizzy, and was vomiting and fainting. Tapia offered to meet Guzman at the train station and accompany her to work that morning so that she had

someone with her if she felt sick. However, because of Guzman's condition, Guzman's husband called Tapia to tell her that Guzman was too ill to go to work.

19. Guzman tried to call the Restaurant several times to communicate to Pfeifer that she would not be coming to work. However, no one answered the phone because it was too early in the morning and no one had yet arrived in the Restaurant's back office. When Pfeifer arrived at the Restaurant later that morning, Tapia told him that Guzman was still unable to come to work. Tapia told Pfeifer (with Torres translating) that she and Guzman were supposed to meet at the train station to commute to work together, but that Guzman was too ill to go to work. Pfeifer said that was fine, and he further told Tapia that he and Torres would call Guzman together when they had a chance.

20. The following day, February 15, 2014, Guzman was still feeling ill. Guzman told Tapia that she was going in to work, but that she may be late. Tapia relayed the message to Pfeifer, who told Tapia that he would call Guzman.

21. Pfeifer called Guzman with Torres, who translated the conversation. During that conversation, Pfeifer told Guzman that as a result of her absences, she had lost the right to work at the Restaurant and that her employment was being terminated.

22. When Guzman protested that she should not be fired for being sick, Pfeifer assured Guzman that her dismissal was for her own good, and that it would not be safe for her to work at the Restaurant in light of her pregnancy.

23. Pfeifer reiterated these comments to Guzman when she came to pick up her termination paperwork at the Restaurant a day or two later.

24. After Guzman retained counsel and her lawyers contacted Maialino about her claims, the Restaurant stated, through its lawyers, that Guzman was terminated because she had missed work on seven occasions without notice, most recently on February 2, 2014.

25. The Restaurant's explanation for Guzman's dismissal is false. In fact, throughout her employment with Maialino, Guzman never missed work without notifying the Restaurant about her absence.

#### Facts Related to Tapia's Claims

26. Tapia became pregnant in July 2014. Soon thereafter, she disclosed her pregnancy to Sous Chefs Calabro and Ken Orsi ("Orsi"), both of whom reported to Pfeifer.

27. In or about the end of August 2014, Orsi told Tapia that he needed her to wash lettuce heads. The lettuce heads were in a large container on the floor. Tapia asked Orsi to lift the container of lettuce heads onto the counter for her. Orsi asked Tapia why she was asking him to lift the container. Tapia explained that the container was too heavy, and that she was pregnant. Orsi replied, in sum and substance, "It's not my problem that you got pregnant."

28. On Saturday, September 6, 2014, while at work, Tapia began to experience severe nausea related to her pregnancy.

29. Tapia took a break in the Restaurant's bathroom and began to vomit. Tapia asked Orsi for a half-hour break to see if her anti-nausea medication would take effect. Orsi refused and sent her home, stating that he could not let her work in her condition.

30. Tapia was not scheduled to work the following two days.

31. On September 9, 2014, with Orsi's approval, Tapia did not go to work in order to attend a doctor's appointment.



32. On September 10, 2014, Tapia was on her way to work, but she began to experience significant back and stomach pain, which were related to her pregnancy. As a result, she went to the emergency room at The Allen Pavilion, New York Presbyterian Hospital.

33. Tapia called Calabro and told him about her medical condition. Tapia told Calabro that she was on her way to work, but she had to go to the hospital due to stomach pains. Calabro knew that Tapia was pregnant. Tapia also said to Calabro that she would be at work the next day if she were physically able to work. Calabro told her that was fine.

34. The following day, September 11, 2014, before going to work, Tapia spoke to Karina, a colleague at the Restaurant, to see what time Tapia was to report to work. Karina told her that, according to Orsi, Tapia had been suspended until further notice and that she should not report to work.

35. Tapia called Orsi. Orsi speaks Spanish. Orsi told Tapia that he had not made the decision to suspend her, that Tapia needed to speak with Pfeifer, and that she should report to the office the following day.

36. On September 12, 2014, Tapia went to the office and spoke with Orsi and Pfeifer. Orsi translated between Pfeifer and Tapia. Pfeifer said that she was being fired for taking too many days off.

37. Tapia told Pfeifer that her absences had almost all been due to medical reasons and her pregnancy. She attempted to show him the documentation from her September 9 visit to the doctor and her September 10 visit to the emergency room, but Pfeifer refused to reconsider and Tapia's employment was terminated.

38. Pfeifer told Tapia that he was firing her because of Restaurant policy, and that he was very sorry, but she could not work at the Restaurant anymore because she was pregnant.



39. After Tapia retained counsel and her lawyers contacted Maialino about her claims, the Restaurant stated, through its lawyers, that Tapia was terminated because she had missed work on sixteen occasions without notice, most recently on September 9 and 10, 2014.

40. The Restaurant's explanation for Tapia's dismissal is false. In fact, throughout her employment with Maialino, Tapia never missed work without notifying the Restaurant about her absence.

### FIRST CAUSE OF ACTION

#### NYCHRL – Discrimination Based on Pregnancy

41. Plaintiffs repeat and re-allege the allegations set forth in paragraphs "1" through "40" as if set forth fully herein.

42. Defendant discriminated against Plaintiffs by terminating them on the basis of their respective pregnancies, in violation of N.Y.C. Admin. Code. § 8-107(1)(a).

43. Defendant knew that its actions constituted unlawful discrimination and/or Defendant acted with malice or reckless disregard for Plaintiffs' statutorily protected rights.

44. As a result of the Defendant's unlawful acts of discrimination, Plaintiffs have suffered and will continue to suffer irreparable injury, monetary damages, and emotional distress damages, unless and until the Court grants the relief sought.

### SECOND CAUSE OF ACTION

#### NYCHRL – Failure to Accommodate Pregnancy and Related Medical Conditions

45. Plaintiffs repeat and re-allege the allegations set forth in paragraphs "1" through "44" as if set forth fully herein.

46. Defendant discriminated against Plaintiffs by failing to provide them with reasonable accommodations, including unpaid leave, for their respective pregnancies and related

medical conditions and failing to engage in the interactive process to determine a reasonable accommodation for Plaintiffs' respective pregnancies and related medical conditions, in violation of N.Y.C. Admin. Code. § 8-107(22).

47. Defendant knew that its actions constituted unlawful discrimination and/or Defendant acted with malice or reckless disregard for Plaintiffs' statutorily protected rights.

48. As a result of the Defendant's unlawful acts of discrimination, Plaintiffs have suffered and will continue to suffer irreparable injury, monetary damages, and emotional damages unless and until the Court grants the relief sought.

#### PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully requests that this Court enter a judgment:

- (a) Declaring that Defendant is in violation of the New York City Human Rights Law;
- (b) Awarding Plaintiffs all past and future lost wages and benefits pursuant to the New York City Human Rights Law;
- (c) Awarding Plaintiffs compensatory damages pursuant to the New York City Human Rights Law;
- (d) Awarding Plaintiffs punitive damages pursuant to the New York City Human Rights Law;
- (e) Awarding Plaintiffs costs and reasonable attorneys' fees in this action, pursuant to the the New York City Human Rights Law; and
- (f) Granting such other and further relief as this Court deems necessary and proper.

Dated: New York, New York  
October 22, 2015

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