UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

DARLENE HERNANDEZ, Plaintiff, -against- GENESCO INC. d/b/a JOURNEYS, Defendants.	**COMPLAINT** **Civil Action No.: 25-cv-4241** Jury Trial Demanded

DARLENE HERNANDEZ ("Plaintiff" or "Ms. Hernandez"), by and through her attorneys, FITAPELLI & SCHAFFER, LLP, files this Complaint against GENESCO INC. d/b/a Journeys ("Genesco" or "Defendant") and alleges upon knowledge as to herself and her own actions and upon information and belief as to all other matters as follows:

NATURE OF THE CASE

1. This is a civil action for damages and equitable relief based upon violations that Genesco committed against Ms. Hernandez's rights guaranteed to her by the: (i) the pregnancy discrimination provisions of the New York City Human Rights Law, N.Y.C. Admin Code § 8-107(1)(a)(3) ("NYCHRL"); (ii) the cooperative dialogue provisions of the NYCHRL; (iii) the New York City Pregnancy Workers Fairness Act ("NYCPWFA"), 8-107(22); (iv) the anti-retaliation provisions of the NYCHRL, N.Y.C. Admin Code § 8-107(7); (v) the Family Medical Leave Act

("FMLA"), 29 U.S.C. § 28 *et seq.*; (vi) the New York Labor Law ("NYLL"), and (vii) any other claim(s) that can be inferred from the facts set forth herein.[1]

2. As described in more detail below, Ms. Hernandez was a long-term employee of Genesco, having worked her way up from sales associate beginning in 2014 up to her most recent position of Retail/Store Manager. After informing Genesco of her pregnancy, she was forced to deal with an escalating hostile work environment implemented by her District Manager Geordy Hernandez ("DM Hernandez").[2] After making a formal complaint of this unlawful discrimination to HR in May 2023, Genesco did nothing to stop the ongoing harassment, which continued to escalate. Then, DM Hernandez undertook a campaign to fire Plaintiff, including the issuance of further write ups and providing false advice to Plaintiff about how to save her job. In essence, due to her pregnancy and her formal complaint about his harassment, DM Hernandez set Plaintiff up to be fired. In fact, DM Hernandez, with full authority of Genesco, terminated Plaintiff one day before she was set to go out on maternity leave, and as it happened, only a few days before she gave birth to her daughter.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this case pursuant to 28 U.S.C. § 1332 given that diversity is satisfied. Specifically, Plaintiff is a citizen of the State of New York, and Defendant is a citizen of the State of Tennessee in that it is organized in Tennessee and has its principal place of business in Tennessee.

[1] Plaintiff filed a charge of discrimination with the United States Equal Employment Opportunity Commission on January 24, 2025. Upon receipt of a Right to Sue letter, Plaintiff will amend this Complaint to add claims under Title VII of the Civil Rights Act of 1964, as amended by the Pregnancy Discrimination Act of 1978, and the Pregnancy Workers Fairness Act.

[2] There is no relation between Plaintiff and DM Hernandez.

4. Plaintiff is entitled to damages in excess of $75,000.00, inclusive of back pay, compensatory damages, punitive damages, and attorneys' fees and costs sought in this action.

5. Additionally, this Court has original jurisdiction over this matter pursuant to 28 U.S.C. § 1331, as this action arises under the FMLA. The supplemental jurisdiction of the Court is invoked pursuant to 28 U.S.C. §§ 1367 over all state law claims given that these claims arise from the same nucleus of operative facts as the federal claims.

6. Venue is appropriate in this Court pursuant to 28 U.S.C. § 1391(b)(2), as a substantial part of the events or omissions giving rise to the claims for relief occurred within this judicial district.

7. Pursuant to, and as required by §8-502 of the New York City Human Rights Law, Plaintiff has also served a copy of this Complaint upon the City Commission on Human Rights and Corporation Counsel.

PARTIES

8. At all relevant times herein, Plaintiff worked for Defendant in New York City, and was an "employee" entitled to protection as defined by the FMLA, NYCHRL/NYCPWFA, and the NYLL. Plaintiff is a resident of Queens County.

9. At all relevant times herein, Defendant was and is a Tennessee corporation with its principal place of business located at 535 Marriot Drive, Nashville, Tennessee 37214.

10. During the relevant period, Defendant employed more than 50 employees and thus is an "employer" within the meaning of the FMLA, the NYCHRL, and the NYLL.

BACKGROUND FACTS

11. Journey's is one of the largest shoe store chains in the United States with more than 20 stores in the immediate New York City/Long Island, and Northern New Jersey areas.[3] Its parent company – Genesco, Inc. – is a publicly traded corporation under the stock name (NYSE: GCO) that owns and operates over 1,400 stores throughout the United States, Canada, the United Kingdom, and Ireland.[4]

12. At all times relevant, Plaintiff worked at Genesco Store 1036 located at the Queens Mall – 9015 Queens Boulevard, Elmhurst, New York 11373.

13. Plaintiff had a long and successful career with Genesco. Specifically, she started in approximately 2014 as a part-time sales associate, working her way up to the position of co-store manager in 2017 through 2021. Ms. Hernandez was promoted to Store Manager/Retail Manager[5] in approximately May 2022 and held this position until her termination. During this time, Ms. Hernandez had co-managers Izamary Torres and Ashly Guarneros under her supervision.

14. As Store Manager, Ms. Hernandez was expected to meet personal sales goals and overall store sales goals, along with her co-managers Ms. Torres and Ms. Guarneros. Sales numbers at all retail locations are often a product of market forces beyond any employee's control. For years, including while she held this position, Genesco understood this, and allowed Ms. Hernandez and others to work hard to make up sales numbers where appropriate. Thus, while Ms. Hernandez at times had received notifications that her sales were down for specific periods of times, she worked extremely hard to correct these sales numbers as necessary and was successful in doing so.

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[3] Stores Locations, Journeys Website (available at https://www.journeys.com/stores) (last accessed July 16, 2025).
[4] About Genesco: Genesco Website (available at https://www.genesco.com/about-genesco) (last accessed July 16, 2025).
[5] The position will be referred to as Store Manager.

15. Genesco also had a policy in which write ups reset each calendar year. Thus, in practice, write ups from one year were not considered as a basis for discipline or termination in the following years. Genesco also had a policy and practice of working with employees whos' sales metrics were low, and often worked out some flexibility with moving those employees to different positions as opposed to terminating their employment.

16. Things changed when Ms. Hernandez became pregnant and called out DM Hernandez on his clear prejudice towards her pregnancy to HR.

17. In approximately December 2022, Ms. Hernandez informed her colleagues and supervisors that she was pregnant with an expected due date of August 2023. As she advanced in her pregnancy, Ms. Hernandez began to take more days off due to doctor's visits and to deal with the ongoing effects pregnancy had upon her body. These absences, of course, were excused, as they almost exclusively consisted of accrued sick and vacation days. Ms. Hernandez made sure to leave her co-managers in place to succeed while she was out due to her pregnancy on these days and time slots, ensuring they had what they needed for the store to run smoothly.

18. In on around May 2023, DM Hernandez took it upon himself to bring up purported deficiencies in Ms. Hernandez's performance to her subordinates with an aim to stow dissonance at the store.

19. Specifically, DM Hernandez spoke to Ms. Guarneros and in sum and substance, referenced Ms. Hernandez's pregnancy and referenced her "inability" to work hours he believes to be required for the job. He attempted to have Ms. Guarneros agree with him that Ms. Hernandez was not pulling her weight, with an obvious insinuation that it is due to her pregnancy. Although he couched his message with "pregnancy is protected by law," he continued to call out Ms. Hernandez for "calling out and not making her 45 hours while [others] were hitting [theirs]."

20. Additionally, DM Hernandez discussed Ms. Hernandez's performance with Ms. Torres, another co-store manager. DM Hernandez asked Ms. Torres in sum and substance if it "bothered" her that Ms. Hernandez was doing less work than her and others. In another instance, DM Hernandez questioned Ms. Torres about whether Ms. Hernandez could climb the store shelf ladders and whether she was refusing to do so because of her pregnancy.

21. Both Ms. Guarneros and Ms. Torres told Ms. Hernandez about DM Hernandez' comments.

22. On May 8, 2023, DM Hernandez held a meeting with Ms. Hernandez and outlined purported deficiencies in her job performance. However, these were based on her use of PTO and other excused time for doctor's visits or dealing with pregnancy symptoms. DM Hernandez issued a write up this day, which listed itself as a "final warning."

23. This "final warning" is inconsistent with Genesco progressive discipline policy which requires an employee receive a verbal warning, followed by a written warning, then a final warning, then a 90-day probation period (at manager's discretion) prior to termination.

24. At this meeting, DM Hernandez offered Plaintiff two take it or leave it choices: (1) take leave now or take a demotion; *or* (2) transfer to another store farther away from her current location. Plaintiff explained the issues with these two draconian options, and DM Hernandez made clear there could be and would not be any other accommodation made for her.

25. DM Hernandez did not engage in a cooperative dialogue with Plaintiff about what accommodations could allow her to perform the essential duties of her job. With being pregnant, Plaintiff found herself moving slower with the pregnancy's affects on her body, which required her to take sick days due to pregnancy-illnesses and doctor's appointments. Yet, accommodations could have been made as to certain job duties which would have allowed her to perform the

essential duties of her job – i.e. – making sales and improving store sales. For instance, Genesco could have re-assigned more physical tasks to other workers to allow Plaintiff to remain seated and be more customer facing to facilitate sales. Genesco could have also provided additional support to the store as a whole by providing extra workers as is often done by upper management. If Plaintiff's job was to increase store sales as a whole, Genesco could have provided such additional support, as they have done for other stores. Genesco, as a publicly traded company, could have done all of this without an undue burden.

26. Yet, there was no cooperative dialogue by Genesco. Genesco did not provide a final written report outlining reasonable accommodations. Its only "accommodation" was for Plaintiff to take leave or take a demotion with relocation to a different borough. This is not a cooperative dialogue as required by the NYCHRL.

27. The following day Ms. Hernandez learned that DM Hernandez unilaterally reached out to the leave department on her behalf, against her wishes. Plaintiff felt belittled, bullied, and threatened with the fact that she was being pressured to take immediate full leave before the birth of her daughter. This caused her great emotional distress at the workplace.

28. On May 11, 2023, Ms. Hernandez filed a formal complaint with HR about DM Hernandez's comments and conduct towards her, including his inappropriate comments about her pregnancy. In support, she also submitted a witness statement by Ms. Guarneros that outlined DM Hernandez's inappropriate comments about her pregnancy.

29. HR did not fix the situation whatsoever, and in fact backed up Mr. Hernandez' general messaging that her only options were to take leave or take a demotion with relocation.

30. Based on information and belief, HR did not interview Ms. Torres or Ms. Guarneros as part of an investigation, and there was no communication to them or the store that DM Hernandez's comments were inappropriate.

31. Ms. Hernandez continued her employment into the summer taking accrued days off as needed for her pregnancy while DM Hernandez continued his campaign to fire her. Later in May 2023, while holding a normal meeting addressing sales and the store's performance, DM Hernandez asked Plaintiff if she was coming back after her leave. Ms. Hernandez responded, as anyone would, that the health of her baby is paramount to that decision but that she expected to. Clearly, DM Hernandez took that answer to heart in his continued campaign to fire her.

32. During this time, DM Hernandez's visits to the store were not pleasant. He consistently tried to find reasons to write up Plaintiff due to her pregnancy and her complaint to HR.

33. For instance, in one example, DM Hernandez told Plaintiff that a customer issued a complaint against the store, citing that team members were on their phones and unable to assist during a recent visit. Knowing this to be untrue, Ms. Hernandez determined that her and other team members were all running transactions during the time and date of this visit presented evidence to him to avoid a write up. DM Hernandez dropped this issue when faced with these facts.

34. Then, on or around July 7, 2023, DM Hernandez tried to give her another write up due to alleged incomplete transfers, citing that she had been previously written up for this and would be put on a final warning. Ms. Hernandez, with Ms. Torres as a witness, asked him to point out any previous write ups for missing transfers. DM Hernandez went through her record and was unable to find any such write ups. No write up was given for this issue.

35. This campaign to find reasons to write up Plaintiff was calculated by DM Hernandez. Based on information and belief, he previously communicated to store management employees his practice of building sufficient paper trails in order to fire employees.

36. Ultimately, however, on July 7, 2023 he nevertheless issued Plaintiff a write up outlining poor individual sales performance. Interestingly, this July write up identifies itself as "written counseling," as opposed to a final warning. Additionally, in this meeting, Plaintiff commented to DM Hernandez that the store numbers were unlikely to improve by the end of the quarter given factors outside of her or other co-managers' control. DM Hernandez specifically told Plaintiff to focus on improving her individual sales figures for the quarter.

37. Plaintiff took this advice to heart and worked tremendously hard to raise her individual sales figures for the quarter, which she ultimately did.

38. Normal interactions with other employees were also affected by DM Hernandez. Despite Ms. Hernandez's offer to help train the new retail manager that would be covering the store while she was on leave, DM Hernandez forbade her from communicating or speaking with him.

39. Despite all this, upper management, besides DM Hernandez, at Genesco did not treat Ms. Hernandez as if she was a failing manager. In this regard, on July 24, 2023, Ms. Hernandez attended a marketing meeting with supervisors above DM Hernandez's position. At no point at this meeting did anyone approach her to discuss her or her store's alleged poor performance. She participated in the meeting without any indication that anything was wrong.

40. On July 31, 2023, Ms. Hernandez put in her maternity leave papers with HR confirming that her leave would begin on August 5, 2023 (her due date) with a return date of

December 2023. HR had full knowledge of her expected delivery date and leave date prior to the submission of these papers. No issues with this request were reported to her.

41. Yet, her career would come to an end only three days after submitting this leave request when on August 3, 2023, DM Hernandez came to the store and fired her. Specifically, he went to the store and told Ms. Hernandez that they needed to do a quarterly review. At this sit down, he fired her and told her there was nothing he could do for her. To add insult to injury, DM Hernandez asked Plaintiff if she wanted to finish out her work shift despite being terminated.

42. Importantly, Ms. Hernandez had improved her individual figures since the July 2023 write up, as she often did during her employment and as DM Hernandez instructed her to focus on and fix. Yet, that was not acknowledged by DM Hernandez. Surprisingly, no one else was fired, including none of the co-store managers, despite store sales throughout the area being down due to the ongoing market forces.

43. DM Hernandez did not follow company policy and practice in placing Plaintiff on an official probationary period prior to termination or a transfer to another position. This is in contrast to DM Hernandez's and Genesco's prior practice of providing such official probationary period before a termination.

44. Genesco also provides individuals who were not pregnant and who did not make HR complaints about unlawful discrimination with additional time to turn stores around. For instance, Plaintiff knows of a former retail manager named Bobby Hatchet who was given approximately two years to work through store-level sales difficulties before being promoted to district manager. This is in stark contrast to Plaintiff, who was in the position for only 14 months.

45. DM Hernandez also had full knowledge that her baby was to be born in early August. In fact, on July 19, 2023, Plaintiff and DM Hernandez texted about the baby's expected

August 1, 2023 potential due date. This is significant because DM Hernandez' birthday is August 1st. Thus, they thought it humorous that he and Plaintiff's baby could share birthdays.

46. Additionally, based on information and belief from past practices, Genesco had a policy where managers in Ms. Hernandez's position were regularly given an opportunity to "step down" into a lower role as opposed to termination. This regularly given option was not given to Ms. Hernandez at this meeting.

47. No co-store managers were terminated at this time or told their jobs were in jeopardy at this time.

48. On the verge of giving birth, Ms. Hernandez found herself suddenly without the security of this job and the paid leave she expected. Even after her termination, Ms. Hernandez became aware that DM Hernandez continued to talk to employees about her, ranging from complaints about her and wondering if she had her baby.

49. Based on information and belief, Genesco terminated DM Hernandez' employment sometime in 2024.

50. Any nondiscriminatory proffered reason for Plaintiff's termination is pretext and the real reason for her termination was based on her pregnancy and in retaliation for her formal HR complaint made against DM Hernandez.

51. Genesco' unlawful acts of pregnancy discrimination, retaliation, and wrongful termination caused Ms. Hernandez to suffer, and continue to suffer, monetary and economic damages as well as severe mental anguish and emotional distress, including but not limited to, depression, humiliation, embarrassment, stress and anxiety, loss of self-esteem and self-confidence, and emotional pain and suffering.

52. Ms. Hernandez accrued paid time off in the form of sick time and vacation pay during her employment with Genesco, having accrued approximately 1 hour of sick time and 112 hours of vacation time at the time of her termination.

53. Based on information and belief, Genesco has a policy and practice whereby employees are paid for all or some of their accrued but unused paid time off at the end of their employment.

54. Genesco did not pay Ms. Hernandez all of her earned but unused paid time off after her termination.

FIRST CAUSE OF ACTION

Gender/Pregnancy Discrimination in Violation of the NYCHRL

55. Plaintiff repeats, reiterates, and re-alleges each and every allegation set forth above with the same force and effect as if more fully set forth herein.

56. The NYCHRL makes it unlawful for an employer to fail or refuse to hire or to discharge any individual, or otherwise discriminate against any individual with respect to the employee's compensation, terms, conditions, or privileges of employment, because of such individual's gender. Pregnancy discrimination is a form of gender discrimination under the NYCHRL. *See, e.g.*, *Cameron v. N.Y.C. Dep't of Educ.*, No. 15-CV-9900 (KMW), 2018 WL 1027710, at *10 (S.D.N.Y. Feb. 21, 2018) (citing *Chauca v. Abraham*, 841 F.3d 86, 90 n.2 (2d Cir. 2016), *as amended* (Nov. 8, 2016)).

57. As described above, Defendant is an employer within the meaning of the NYCHRL, while Plaintiff is an employee within the meaning of the NYCHRL.

58. As also described above, Defendant discriminated against Plaintiff by treating her less well because of her pregnancy.

59. As a direct and proximate result of Defendant's unlawful discriminatory conduct in violation of the NYCHRL, Plaintiff has suffered, and continues to suffer, economic loss, for which Plaintiff is entitled to an award of monetary damages and other relief.

60. As a direct and proximate result of Defendant's unlawful discriminatory conduct in violation of the NYCHRL, Plaintiff has suffered, and continues to suffer, severe mental anguish and emotional distress, including, but not limited to, depression, humiliation, embarrassment, stress and anxiety, loss of self-esteem and self-confidence, and emotional pain and suffering, for which Plaintiff is entitled to an award of monetary damages and other relief.

61. Defendant's unlawful discriminatory actions constitute malicious, willful, and wanton violations of the NYCHRL, for which Plaintiff is entitled to an award of punitive damages.

SECOND CAUSE OF ACTION

Failure to Engage in Cooperative Dialogue and Provide Reasonable Accommodation in Violation of the NYCHRL/NYCPWFA

62. Plaintiff repeats, reiterates, and re-alleges each and every allegation set forth above with the same force and effect as if more fully set forth herein.

63. As also described above, Defendant is an employer within the meaning of the NYCHRL and the NYCPWFA, while Plaintiff is an employee within the meaning of the NYCHRL and the NYCPWFA.

64. NYCHRL § 8-107(22) prohibits an employer or employee or agent from refusing to provide a reasonable accommodation to the needs of an employee for her pregnancy, childbirth, or related medical condition that will allow the employee to perform the essential requisites of the job.

65. Defendant violated the NYCHRL/NYCPWFA when it became aware of Plaintiff's pregnancy and related medical conditions, but failed to engage in the cooperative dialogue process

and provide her with a reasonable accommodation for the duration of her pregnancy and employment.

66. Defendant's practice of offering Plaintiff the draconian options of taking leave or taking a demotion with relocation were not reasonable accommodations and do not constitute a cooperative dialogue.

67. As a direct and proximate result of Defendant's failure to engage in a cooperative dialogue in violation of the NYCHRL/NYCPWFA, Plaintiff has suffered, and continues to suffer, economic loss, for which Plaintiff is entitled to an award of monetary damages and other relief.

68. As a direct and proximate result of Defendant's unlawful discriminatory conduct in violation of the NYCHRL/NYCPWFA, Plaintiff has suffered, and continues to suffer, severe mental anguish and emotional distress, including, but not limited to, depression, humiliation, embarrassment, stress and anxiety, loss of self-esteem and self-confidence, and emotional pain and suffering, for which Plaintiff is entitled to an award of monetary damages and other relief.

69. Defendant's unlawful actions were taken willfully and wantonly, and/or were so negligent and reckless and/or evidenced a conscious disregard of the rights of Plaintiff so that Plaintiff is entitled to an award of punitive damages.

THIRD CAUSE OF ACTION

Failure to Engage in Cooperative Dialogue in Violation of the NYCHRL

70. Plaintiff repeats, reiterates, and re-alleges each and every allegation set forth above with the same force and effect as if more fully set forth herein.

71. NYCHRL § 8-107(28) prohibits employers from refusing or otherwise failing to engage in a cooperative dialogue within a reasonable time with a person who has requested an accommodation or who the employer has notice may require such an accommodation related to, among other things, "pregnancy, childbirth or a related medical condition as provided in

subdivision 22 of this section." NYCHRL §8-107(28) additionally requires that upon reaching a final determination at the conclusion of a cooperative dialogue, the employer shall provide an employee requesting an accommodation with a final written report.

72. As described above, Defendant refused or otherwise failed to engage in a cooperative dialogue within a reasonable time of having notice that Plaintiff's pregnancy and related medical conditions may have required an accommodation.

73. No final written report complying with the NYCHRL was provided to Plaintiff regarding the availability or non-availability of reasonable accommodations.

74. As also described above, Defendant is an employer within the meaning of the NYCHRL, while Plaintiff is an employee within the meaning of the NYCHRL.

75. As a direct and proximate result of Defendant's failure to engage in a cooperative dialogue in violation of the NYCHRL, Plaintiff has suffered, and continues to suffer, economic loss, for which Plaintiff is entitled to an award of monetary damages and other relief.

76. As a direct and proximate result of Defendant's unlawful discriminatory conduct in violation of the NYCHRL, Plaintiff has suffered, and continues to suffer, severe mental anguish and emotional distress, including, but not limited to, depression, humiliation, embarrassment, stress and anxiety, loss of self-esteem and self-confidence, and emotional pain and suffering, for which Plaintiff is entitled to an award of monetary damages and other relief.

FOURTH CAUSE OF ACTION

Retaliation in Violation of the NYCHRL

77. Plaintiff repeats, reiterates, and re-alleges each and every allegation set forth above with the same force and effect as if more fully set forth herein.

78. NYCHRL § 8-107(7) prohibits an employer from retaliating against an employee who has in good faith opposed any practice forbidden by the NYCHRL.

79. As described above, Defendant is an employer within the meaning of the NYCHRL, while Plaintiff is an employee within the meaning of the NYCHRL.

80. As also described above, after Plaintiff engaged in activity protected under the NYCHRL, Defendant retaliated against Plaintiff by terminating Plaintiff's employment.

81. As a direct and proximate result of Defendant's unlawful retaliatory conduct in violation of the NYCHRL, Plaintiff has suffered, and continues to suffer, economic harm for which Plaintiff is entitled to an award of monetary damages and other relief.

82. As a direct and proximate result of Defendant's unlawful retaliatory conduct in violation of the NYCHRL, Plaintiff has suffered, and continues to suffer, severe mental anguish and emotional distress, including, but not limited to, depression, humiliation, embarrassment, stress and anxiety, loss of self-esteem and self-confidence, and emotional pain and suffering, for which Plaintiff is entitled to an award of monetary damages and other relief.

83. Defendant's unlawful actions were taken willfully and wantonly, and/or were so negligent and reckless and/or evidenced a conscious disregard of the rights of Plaintiff so that Plaintiff is entitled to an award of punitive damages.

FIFTH CAUSE OF ACTION
Family and Medical Leave Act
29 U.S.C. § 2601 et seq. – Interference with Protected Leave Rights

84. Plaintiff repeats, reiterates, and re-alleges each and every allegation set forth above with the same force and effect as if more fully set forth herein.

85. At all times relevant Defendant is a covered employer under the FMLA, and Plaintiff was a protected employee under the FMLA.

86. Plaintiff worked for at least 1,250 hours of service with Defendant during the previous 12-month period prior to her termination.

87. Section 2615 of the FMLA makes it illegal for any employer "to interfere with, restrain, or deny the exercise of or the attempt to exercise, any right provided" by the FMLA. It also makes it "unlawful for any employer to discharge or in any other manner discriminate against any individual for opposing any practice made unlawful by this subchapter."

88. Plaintiff was entitled to take FMLA leave for the birth of her daughter.

89. Plaintiff provided Defendant with notice of her intention to take this leave.

90. Defendant unlawfully denied Plaintiff her leave guaranteed to her by the FMLA by wrongfully terminating her employment just prior to her leave thus interfering with her exercise of said rights.

91. Defendant violated the FMLA and Plaintiff suffered numerous damages as a result.

92. Defendant interfered with Plaintiff's FMLA rights willfully, as they knew she was taking maternity leave to care for her soon to be born daughter. Thus, Defendant knowingly interfered with Plaintiff's attempt to use FMLA leave or acted with reckless disregard for whether their actions were illegal.

SIXTH CAUSE OF ACTION

Family and Medical Leave Act – 29 U.S.C. § 2601 et seq. – Retaliation (in the alternative)

93. Plaintiff repeats, reiterates, and re-alleges each and every allegation set forth above with the same force and effect as if more fully set forth herein.

94. At all times relevant Defendant is a covered employer under the FMLA, and Plaintiff was a protected employee under the FMLA.

95. Plaintiff worked for at least 1,250 hours of service with Defendant during the previous 12-month period prior to her termination.

96. Section 2615 of the FMLA makes it "unlawful for any employer to discharge or in any other manner discriminate against any individual for opposing any practice made unlawful by this subchapter."

97. Plaintiff was entitled to take FMLA leave for the birth of her daughter.

98. Plaintiff provided Defendant with notice of her intention to take this leave.

99. Defendant unlawfully denied Plaintiff her leave guaranteed to her by the FMLA and retaliated against her by terminating her employment just prior to her leave starting for no other reason than due to her attempt to exercise these rights.

100. Defendant violated the FMLA and Plaintiff suffered numerous damages as a result.

101. Defendant acted willfully, as it knew she was taking maternity leave to care for her soon to be born daughter. Thus, Defendant knowingly retaliated against Plaintiff for her attempt to use FMLA leave or with reckless disregard for whether their actions were illegal.

SEVENTH CAUSE OF ACTION
New York Labor Law

102. Plaintiff repeats, reiterates, and re-alleges each and every allegation set forth above with the same force and effect as if more fully set forth herein.

103. At all times relevant, Plaintiff was employed by Defendant within the meaning of NYLL §§ 2 and 651.

104. Defendant is liable to Plaintiff by failing to pay her the cash value of her earned but unused paid time off upon the cessation of her employment.

105. Defendant instituted a policy and practice whereby employees were paid for all or some of unpaid time off at the end of their employment.

106. Plaintiff relied upon such a practice in accepting and continuing her employment with Defendant.

107. Plaintiff's termination does not fall into any exceptions to Defendants' PTO policy whereby a withholding of such PTO is warranted, if any exception even exists.

108. NYLL § 190(a) provides that the term "wages" also "includes benefits or wage supplements as defined in section one hundred ninety-eight-c of this article, except for the purposes of sections one hundred ninety-one and one hundred ninety-two of this article."

109. NYLL § 198-c(2) defines wages as including "vacation, separation or holiday pay."

110. Accordingly, the unpaid PTO owed to Plaintiff qualifies as unpaid wages under NYLL § 190(1), and she is able to seek the appropriate relief under NYLL § 663.

111. Due to Defendant's NYLL violation, Plaintiff is entitled to recover her unpaid wages/benefits, liquidated damages, reasonable attorney's fees, statutory penalties and costs and disbursements of the action pursuant to the NYLL.

DEMAND FOR A JURY TRIAL

112. Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff demands a trial by jury on all claims in this action.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court enter judgment in her favor against Defendant and grants the following relief:

a) An award of damages in an amount to be determined at trial, plus prejudgment interest to compensate Plaintiff for all monetary and/or economic damages, including, but not limited to, the loss of past and future income, wages, compensation, seniority, and other benefits of employment;

b) An award of damages in an amount to be determined at trial, plus prejudgment interest to compensate Plaintiff for all non-monetary damages, severe mental anguish and

emotional distress, including, but not limited to, humiliation, embarrassment, stress, anxiety, loss of self-esteem, loss of self-confidence, loss of personal dignity and any other physical and mental injuries;

c) An award of punitive damages in an amount to be determined at trial;

d) An award of liquidated damages pursuant to the FMLA;

e) An award of damages of all owed wages/benefits plus applicable liquidated damages and interest pursuant to the NYLL;

f) An award of attorneys' fees, costs and expenses incurred in the prosecution of this action; and

g) Such other and further relief as this court deems just and proper.

Dated: New York, New York
July 30, 2025

Respectfully submitted,

/s/ Armando A. Ortiz

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