

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

BETSABE CUNYA, on behalf of herself and  
others similarly situated,

Plaintiff,

v.

SAGE BRE NY/NJ Manger B LLC; HILTON  
WORLDWIDE HOLDINGS, INC.; BRE NE  
HOSPITALITY PROPERTY OWNER, LLC;  
and UNUM GROUP,  
Defendants.

Case No.: 18-cv-6405

**COMPLAINT**

**PLAINTIFF, BETSABE CUNYA**, by way of this Complaint for Compensatory  
Damages, Injunctive Relief, and for Class Action, on behalf of herself and others similarly  
situated, against Defendants, alleges the following:

**PRELIMINARY STATEMENT**

1. Plaintiff, Betsabe Cunya, (“Ms. Cunya”), was an exemplary employee who became pregnant at age 37. When her employer learned of her pregnancy, she was passed over for supervisory positions for which she was fittingly qualified. Instead, her employer hired a man, and, subsequently, promoted a non-pregnant employee.
2. Ms. Cunya’s male supervisor, who was hired for the position she was denied, mocked her for being pregnant, mimicked her protruding stomach by making hand gestures, increased her workload so that he could ridicule her, said she was using her pregnancy as an excuse, and told her that a pregnant woman was unwelcome in his department. Ms. Cunya’s pregnant co-workers were similarly mistreated, over-worked and had their rights flouted. Ms. Cunya endured a pervasive and severe pregnancy-related hostile work environment, which her employer failed to remediate.

3. Ms. Cunya's employer also failed to provide her with statutorily mandated short-term disability benefit. Nor did the employer provide this legally mandated employment benefit to other similarly situated pregnant female employees.

4. Ms. Cunya charges her employer with discrimination because of sex and pregnancy for denying her supervisory position for which she was amply qualified, for condoning a pregnancy-related hostile work environment, and on behalf of herself and other similarly situated pregnant female employees who were not provided legally mandated short-term disability benefit, charges Defendants with implementing a discriminatory policy or practice of unequal provision of a term, condition, or privilege of employment on the basis of sex and pregnancy in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*, ("Title VII"), as amended by the Pregnancy Discrimination Act, 42 U.S.C. § 2000e(k) ("PDA"), and the New York State Human Rights Law, N.Y. Exec. Law, § 290 *et seq.*, ("NYSHRL"). Further, for misleading Ms. Cunya about her entitlement to legally mandated short-term disability benefit, Ms. Cunya charges Defendants with unfair and deceptive practices in violation of New York State General Business Law, § 349 ("N.Y. Gen. Business Law").

#### **CONDITIONS PRECEDENT**

5. On October 26, 2017, Ms. Cunya timely filed a charge of sex and pregnancy discrimination with the Equal Employment Opportunity Commission ("EEOC") and New York State Division of Human Rights ("NYSDHR").

6. On June 5, 2018, Ms. Cunya requested a Notice of Right to Sue from the EEOC prior to a determination by the EEOC or NYSDHR.

7. On August 13, 2018, Ms. Cunya received a Notice of Right to Sue from the EEOC.

### **JURISDICTION**

8. This Court has subject matter jurisdiction over Ms. Cunya's Title VII, and PDA claims pursuant to 28 U.S.C. §1331.

9. This Court has supplemental jurisdiction over Ms. Cunya's claims under the NYSHRL and N.Y. Gen. Business Law pursuant to 28 U.S.C. §1367 because these claims are closely related to Ms. Cunya's case or controversy under Article III of the United States Constitution.

### **VENUE**

10. Venue lies in this judicial district pursuant to 28 U.S.C. § 1391 (b)(2) because Ms. Cunya is a resident of Suffolk County and the unlawful employment practices complained of herein occurred within the Eastern District of New York.

### **PARTIES**

11. Plaintiff, Ms. Cunya, is a 39-year-old mother, who currently resides in Suffolk County, New York. Upon information and belief, Ms. Cunya was employed by Defendants Sage BRE NY/NJ Manager B LLC, Hilton Worldwide Holdings, Inc., and/or BRE NE Hospitality Property Owner, LLC, at the Hampton Inn Long Island-Brookhaven Hotel, ("Hotel"), in Suffolk County, New York.

12. Defendant, Sage BRE NY/NJ Manager B LLC, ("Sage"), under a contractual agreement with Hilton Worldwide Holdings, Inc. and/or BRE NE Hospitality Property Owner, LLC, operates the Hotel and is an employer of the Hotel employees. The Hotel located at 2000 North Ocean Avenue in Farmingville, New York, has 161 guest rooms. Upon information and belief, the Hotel employs more than 35 employees. Sage has been registered with the New York State Department of State, ("NYSDS"), since November 8, 2013, with a

registered agent at C T Corporation System, 111 Eighth Avenue, New York, NY 10011. Upon information and belief Sage is also registered to conduct business in the State of New Jersey.

13. Defendant, Hilton Worldwide Holdings, Inc., incorporated on March 18, 2010, is a hospitality company engaged in interstate commerce. The Company owns, leases, manages and franchises hotels and resorts. The Company's segments include ownership, management and franchise. Its brand portfolio includes Hampton by Hilton. Upon information and belief, the Hampton Inn Long Island-Brookhaven ("Hotel") is encompassed in the Hampton by Hilton brand.

14. Defendant, BRE NE Hospitality Property Owner, LLC, ("BRE NE"), upon information and belief is affiliated with the Hotel. BRE NE has been registered with NYSDS since September 26, 2013.

15. Defendant, UNUM Group ("UNUM") provides financial benefits in the United States and United Kingdom. UNUM's insurance products include disability, life and accident, critical illness, dental and vision, and other related services. UNUM US provides group long-term and short-term disability insurance, group life and accidental death and dismemberment products, and supplemental and voluntary lines of business. Defendants Sage, Hilton and/or BRE NE contract with UNUM to provide insurance coverage and benefits to their employees.

### **CLASS CLAIMS**

16. The Class Representative, Ms. Cunya, and the proposed class she seeks to represent have been or will be subjected to discrimination with respect to a term, condition or privilege of employment by Defendants Sage, Hilton and BRE NE's discriminatory policy or practice of failing to provide pregnant female employees with legally mandated short-term disability benefit.



### **CLASS ACTION ALLEGATION**

#### **A. Class Definition**

17. The Class Representative seeks to maintain claims on her own behalf and on behalf of a class of former and current pregnant female employees who worked for Defendants Sage, Hilton and BRE NE (hereinafter, collectively “Defendant Employers”) from January 1, 2012, through the present, and who were subjected to unequal provision of a term, condition or privilege of employment by Defendant Employers’ discriminatory policy or practice of failing to provide pregnant female employees with legally mandated short-term disability benefit.

18. The proposed plaintiff class also includes future female employees who may become pregnant and could be subjected to unequal provision of a term, condition or privilege of employment by Defendant Employers’ discriminatory policy or practice of failing to provide pregnant female employees with legally mandated short-term disability benefit.

#### **B. Efficiency of Certifying a Class to Prosecute Common Claims**

19. Certification of a class of previous, current and future pregnant female employees similarly situated to the Class Representative is the most efficient and economical means of resolving the questions of law and fact which are common to the claims of the Class Representative and all the members of the proposed class. The individual claims of the Class Representative require resolution of the common question of whether Defendants’ policy or practice of failing to provide pregnant female employees with legally mandated short-term disability benefit subjects them to discrimination with respect to a term, condition or privilege of employment on the basis of sex and pregnancy status in violation of federal and state anti-discrimination laws.

20. The Class Representative has standing to seek such relief because of the adverse effect that such discrimination has had on her individually, former pregnant employees, has on current pregnant employees, and will have on female employees who, in the future, become pregnant while employed by Defendant Employers. In order to gain such relief for herself, as well as for the putative class members, the Class Representative will first establish the existence of systemic gender discrimination as the premise for the relief sought. Without class certification, the same evidence and issues would be subject to re-litigation in a multitude of individual lawsuits with an attendant risk of inconsistent adjudications and conflicting obligations. Certification of the proposed class of pregnant female employees who have been or will be affected by these common questions of law and fact is the most efficient and judicious means of presenting the evidence and arguments necessary to resolve such questions for the Class Representative and all the members of the proposed class.

21. The Class Representative's individual and class claims are premised upon a bifurcated method of proof for disparate impact and systemic and individual disparate treatment claims of the type at issue in this case. Such a bifurcated method of proof is the most efficient method of resolving such common issues.

**C. Numerosity and Impracticability of Joinder**

22. Defendant Sage employs hundreds of women in jurisdictions, including New York, where it is legally obligated to provide short-term disability benefit to a female employee because of her pregnancy.

23. Defendant Hilton employs thousands of women in jurisdictions, including New York, where an employer is obligated by law to provide short-term disability benefits to a female employee because of her pregnancy.

24. Defendant UNUM, in jurisdictions, including New York, in which it contracts with Defendant Employers, is legally obligated to provide short-term disability benefit to a female employee because of her pregnancy.

25. Upon information and belief, Defendants have failed to provide legally mandated short-term disability benefit to scores of pregnant female employees in New York State. Joinder of this class would be impracticable as the Class Representative seeks a class too numerous and geographically dispersed. The proposed class consists of current, former or future female employees who have or may become pregnant and are eligible for short-term disability benefit.

**D. Common Questions of Law and Fact**

26. Defendant Employers contracts with Defendant UNUM to provide short-term disability benefit to pregnant female employees. Under N.Y. Workers' Comp. Law § 200 *et seq.*, Defendant Employers are legally obligated to provide short-term disability benefit to pregnant employees. The provision of short-term disability benefit is a term, condition or privilege of employment, which Defendants deny pregnant female employees, as occurred with Ms. Cunya, Defendants' actions raise common questions of law and fact which include:

(a) whether Defendants' policy or practice of failing to provide pregnant female employees with short-term disability benefit subjects them to discrimination with respect to a term, condition or privilege of employment on the basis of sex in violation of Title VII, 42 U.S.C. § 2000e-2(a)(1);

(b) whether Defendants' policy or practice of failing to provide pregnant female employees with short-term disability benefit constitutes discrimination in violation of the Pregnancy Discrimination Act, 42 U.S.C. § 2000e(k);



(c) whether Defendants' policy or practice of failing to provide pregnant female employees with short-term disability benefit constitutes discrimination on the basis of sex in violation of Title VII, 42 U.S.C. § 2000e-2(a)(1);

(d) whether Defendants' policy or practice of failing to provide pregnant female employees with short-term disability benefit has an adverse disparate impact on the basis of sex in violation of Title VII, 42 U.S.C. § 2000e-2(a)(1);

(e) whether Defendants' policy or practice of failing to provide female pregnant employees with short-term disability benefit treats pregnant female employees differently in the receipt of an employment benefit proscribed by 42 U.S.C. § 2000e(k); and

(f) whether Defendants' policy or practice of failing to provide pregnant female employees with short-term disability benefit constitutes discrimination on the basis of sex and pregnancy status in violation of the N.Y. Exec. Law, §296.

27. Defendants' actions denied the Class Representative short-term disability benefit thereby discriminating against her with respect to a term, condition or privilege of employment because of sex and pregnancy status.

28. Upon information and belief, there are scores of pregnant female employees whom Defendants have denied or will similarly fail to provide short-term disability benefit constituting discrimination with respect to a term, condition or privilege of employment because of sex and pregnancy status.

**E. Typicality of Claims and Relief Sought**

29. The claims of the Class Representative are typical of the claims of all members of the proposed class. The Class Representative asserts a claim in the same category she asserts on behalf of the proposed class. The relief sought by the Class Representative for sex and



pregnancy status discrimination complained of here is also typical of the relief which is sought on behalf of all members of the proposed class.

30. The Class Representative is like members of the proposed class, all pregnant female employees who worked for Defendant Employers and who were subjected to discrimination with respect to a term, condition or privilege of employment by Defendant Employers' discriminatory policy or practice of failing to provide pregnant female employees with legally mandated short-term disability benefit. The class also includes currently pregnant female employees and future female employees who may become pregnant.

31. The proposed class members were discriminated against or will be discriminated against in similar ways in that they were, are or will be subjected to the same discriminatory policy or practice of failing to afford them with short-term disability benefit because of their sex and pregnancy status.

32. The Class Representative seeks equal treatment for class members in the terms, conditions or privileges of employment by the provision of legally mandated short-term disability benefit.

33. The relief necessary to remedy the claims of the Class Representative is exactly the same as that necessary to remedy the claims of the proposed class members in this case. The Class Representative seeks the following relief for her individual claims and for those of all members of the proposed class: (a) a declaratory judgment that Defendants have engaged in systemic gender discrimination against pregnant female employees who have requested or will request short-term disability benefits ; (b) a permanent injunction against such discriminatory conduct; (c) injunctive relief which effects procedures for reviewing and providing short-term disability benefit to pregnant employees and requires monitoring of

Defendants' implementation of the procedures; (d) compensation to the class members for unlawful denial of short-term disability benefits to which they were entitled; (e) compensatory damages for unequal provision of a term, condition or privilege of employment on the basis of sex and pregnancy status; (f) punitive and nominal damages to prevent and deter Defendants from engaging in similar discriminatory practices in the future; and (g) attorneys' fees, costs and expenses.

**F. Adequacy of Representation**

34. The Class Representative's interest is co-extensive with those of all the members of the proposed class that she seeks to represent in this case. The Class Representative seeks to remedy discriminatory employment policies, practices and/or procedures so that pregnant female employees will no longer be denied short-term disability benefit which they can rely upon to support their newborn child. The Class Representative is able to represent the proposed class fairly and vigorously as she pursues her individual claims in this action. The Class Representative has retained counsel who are qualified, experienced and able to conduct this litigation and to meet the time and fiscal demands required to litigate an employment discrimination class action of this size and complexity.

**FACTUAL ALLEGATIONS**

***A. Failure to Promote***

35. In or around November 2014, Ms. Cunya was hired as a Room Attendant in the Housekeeping Department by Defendant Employers. After she concluded her three-month probationary period, Ms. Cunya was offered the position of Public Area/Lobby Attendant with a pay raise.

36. At that time, Ms. Cunya's direct supervisor was Maribel Soto ("Ms. Soto"). Ms. Soto commended Ms. Cunya for her job performance and diligent work, and, over time, increased her duties and responsibilities.

37. Ms. Soto trained Ms. Cunya on how to conduct hotel room inspections, inventory checks and maintenance, opening the office for the morning housekeeping crew, creating and scheduling work assignments for room attendants, delegating tasks to each room attendant, placing kitchen food orders, conducting computer data entry, and other supervisory responsibilities. Ms. Soto entrusted Ms. Cunya with usernames and passwords so that she could fulfill supervisory duties when Ms. Soto was unavailable.

38. Ms. Cunya functioned as a *de facto* supervisor. She was routinely scheduled for the early morning shift without a supervisor. The room attendants and housekeeping staff on her shift went to her for assignment, direction and guidance.

39. In or around September 2016, during her first trimester, Ms. Cunya told Ms. Soto that she was pregnant. Ms. Cunya also relayed that she had experienced difficulties in the past trying to get pregnant.

40. Having trained and commended Ms. Cunya for her work, in or around October 2016, Ms. Soto sought out and encouraged Ms. Cunya to apply for a supervisory position. Ms. Soto informed Ms. Cunya of the terms of the job, including a compensation rate at \$12 per hour.

41. On or about October 25, 2016, Ms. Cunya, with Ms. Soto's assistance, completed a company online application for the supervisory position. Ms. Cunya received a confirmatory email for her application. Since she had been serving as a *de facto* supervisor and received favorable commendation, Ms. Cunya believed that she would be offered the supervisory position.



42. To Ms. Cunya's dismay, in or around November 2016, she learned from Ms. Soto that the General Manager, Jaime Laudicina, ("Ms. Laudicina"), had decided to hire a male employee from outside the company. Ms. Laudicina determined that it was best to hire an external male candidate because Ms. Cunya was pregnant, would be unable to handle the stress of the position because of her pregnancy, and would be leaving for maternity leave. Ms. Soto had informed Ms. Laudicina of Ms. Cunya's pregnancy.

43. Ms. Cunya was distraught by the decision not to promote her because of her pregnancy. She was upset that she had been treated unfairly since she had worked hard, knew she had been performing the requirements of the job, and would have benefitted from the salary increase associated with the supervisory position to support her soon-to-be first child.

44. Defendant Employers discriminated against Ms. Cunya on account of pregnancy by not promoting her to the supervisor position even though she had ably performed the duties and responsibilities of the position. Defendant Employers hired or promoted several non-pregnant individuals, one of whom was a male, for supervisory positions before Ms. Cunya left for pregnancy leave. In spite of being passed over for promotion, Ms. Cunya continued to fulfill the duties of a supervisor without compensation.

45. When her new male supervisor, Mr. Carrasquillo, began work, Ms. Cunya was required to assist him with supervisory duties including scheduling, inventory, work assignments, data entry and direct supervision of room attendants.

***B. Failure to Mitigate a Pregnancy-Related Hostile Work Environment***

46. During Ms. Cunya's pregnancy, she experienced unrelenting abuse predominantly perpetrated by her male supervisor, Mr. Carrasquillo, creating a hostile work environment.

47. In or around December 2016, when Ms. Cunya was about 5 months pregnant, Mr. Carrasquillo directed her to leave her public area work station to clean guest rooms. Ms. Cunya informed Mr. Carrasquillo that she had been assigned to the public area and that he was imposing additional duties without justification. She told him that her stomach, which at that time was protruding, made it difficult for her to clean the number of guest rooms he assigned.

48. In response, Mr. Carrasquillo began mocking Ms. Cunya by putting on an effeminate voice cooing “Ayyy, my stomach, oooo my stomach.” Mr. Carrasquillo told Ms. Cunya that she was using her pregnancy as an excuse. In spite of Mr. Carrasquillo taunting her, Ms. Cunya performed the additional tasks he imposed.

49. Subsequently, also in or around December 2016, Mr. Carrasquillo required Ms. Cunya and her co-worker, Norris Gutierrez, (“Ms. Gutierrez”), who at the time was over 8 months pregnant, to clean more than 30 guest rooms, an assignment requiring hours which exceeded her and Ms. Gutierrez’s work shifts. The day after, Ms. Gutierrez told Ms. Cunya that she had experienced “spotting.”<sup>1</sup>

50. In or around February 2017, when Ms. Cunya was about 7 months pregnant, she was again assigned to clean over 30 guest rooms, necessitating, yet again, that she complete an arduous and unreasonable work assignment. Ms. Cunya informed the newly hired non-pregnant supervisor, Julie Santos Allegra, (“Ms. Allegra”), that the duties exceeded a reasonable assignment for one person. Ms. Allegra told Ms. Cunya that she was relaying an

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<sup>1</sup> The term “spotting” refers to vaginal bleeding. When it occurs in the third trimester of a pregnancy, it is often treated as an emergency requiring that a pregnant woman cut down on strenuous activity. *See e.g.*, John D. Jacobson, *Vaginal bleeding in pregnancy*, U.S. National Library of Medicine (1/4/2018), available at <https://medlineplus.gov/ency/article/003264.htm> (last visited November 9, 2018).

order from Mr. Carrasquillo, that he was well aware of the workload, and to whom it was assigned.

51. Ms. Cunha began to cry. She felt dejected and mistreated. She believed that she was putting her baby in jeopardy knowing that, at age 37 and given her previous difficulties with pregnancy, she was enduring a high-risk pregnancy. Ms. Allegra comforted her and offered to help. Ms. Cunha then began to clean guest rooms. Thirty minutes into the task, however, feeling overwhelmed, Ms. Cunha told Ms. Allegra she thought it was best for her to resign.

52. Ms. Cunha, accompanied by Ms. Allegra, went to Ms. Laudicina, the General Manager's office. There, Ms. Cunha reiterated her concern for her baby and offered to resign.

53. Ms. Laudicina told Ms. Cunha that Mr. Carrasquillo was unaware of the magnitude of the work he was assigning. Ms. Laudicina, relying on biased stereotypes against pregnant women, told Ms. Cunha that her hormones were clouding her judgment because she is pregnant. She told Ms. Cunha to think about her baby, that she would be without income and benefits were she to resign, and asked her to take the rest of the day off.

54. Ms. Cunha is aware of other pregnant female employees who Mr. Carrasquillo denigrated because of their pregnancy. For example, in or around January 2017, Ms. Cunha observed a co-worker, who was a temporary employee, Winne (LNU) feeling nauseous. When Ms. Cunha inquired about Winnie's health, she told her that she was pregnant.

55. Later, Mr. Carrasquillo asked Ms. Cunha if she knew whether Winnie was pregnant, she said yes. Mr. Carrasquillo then mockingly said "what does she [Winnie] think; I am going to give her four rooms for eight hours. No way." He said pregnant women do not work well for housekeeping. Ms. Cunha learned that Winnie was not offered a permanent position.



56. Defendant Employers took no action to mitigate the verbal abuse, taunts, harassment and imposition of exceedingly high workload that Ms. Cunya endured during her pregnancy, which caused her mental anguish and made it difficult for her to perform her job.

57. Defendant Employers also took no action to notify Ms. Cunya of a company interactive process through which she could have sought modification of her workload when she initially informed her supervisor that she was pregnant and that she had had difficulties in the past with pregnancy. Ms. Cunya is aware of several pregnant female employees who also were not advised that they could request modification of their workload.

58. Ms. Cunya believes that Defendant Employers created a culture of hostility toward pregnant female employees by failing to remediate the harassment that she and other pregnant employees experienced, by failing to afford pregnant female employees workload modification and by denying them statutorily mandated short-term disability benefits.

***C. Failure to Provide Legally Mandated Short-term Disability Benefit***

59. In early 2017, Ms. Cunya contacted Defendant UNUM to make a claim for short-term disability benefit. A representative of Defendant UNUM told Ms. Cunya that she would receive her pregnancy benefits.

60. By the time she had her baby in April 2017, Ms. Cunya had yet to receive any short-term disability benefit. After she gave birth, Ms. Cunya, again, contacted Defendant UNUM, but this time, she was informed that she would not be getting her short-term disability benefit and was instructed to speak with Defendant Employers.

61. When Ms. Cunya contacted Defendant Sage, she was referred back to Defendant UNUM. After she was given the run-around, Defendant Sage ultimately told her that she was

ineligible because a box on a piece of paper was purportedly not checked off when she was hired three years earlier.

62. By certified mail received by Defendant UNUM on or about July 21, 2017, Ms. Cunya, for a third time, made a claim for short-term disability benefit. To date, Defendants have yet to provide Ms. Cunya with short-term disability benefit that she is legally entitled to receive.

63. Ms. Cunya knows that other pregnant female employees were denied short-term disability benefits despite Defendants legal obligation to provide such benefit.

64. Defendant Employers continue to contract with Defendant UNUM to provide benefits despite knowing that Defendant UNUM offers no assistance to pregnant employees who seek short-term disability benefits. Defendants intentionally and/or with reckless disregard for the rights of pregnant female employees deny them legally mandated short-term disability benefits.

65. Defendants' actions described in this section also constitute unfair and deceptive practices.

### **CAUSES OF ACTION**

#### **First Cause of Action**

#### **Violation of Title VII, 42 U.S.C. §2000e *et seq.* (Failure to Promote on the Basis of Sex and Pregnancy) Against Defendant Employers**

66. Ms. Cunya re-alleges and incorporates by reference each and every allegation contained in the previous paragraphs of the complaint as though fully set forth herein

67. By failing to promote Ms. Cunya because of her sex and/or pregnancy status, among other actions, Defendant Employers discriminated against her in violation of 42 U.S.C. § 2000e-2(a)(1); and § 2000e(k).

68. As a pregnant female employee, Ms. Cunya was a member of a protected class.

69. Ms. Cunya applied for and was qualified for the promotion to Housekeeping Supervisor.
70. Defendant Employers denied Ms. Cunya the promotion she sought.
71. Defendant Employers kept the position open and hired a male job applicant and/or a non-pregnant candidate.
72. Defendant Employers were motivated entirely or in part by Ms. Cunya's sex and/or pregnancy status.
73. Defendant Employers' conduct was intentional, deliberate, willful, malicious, reckless and/or conducted with callous disregard for the rights of Ms. Cunya.
74. As a direct and proximate result of Defendant Employers conduct, Ms. Cunya suffered damages and is entitled to damages for economic loss, physical and emotional distress, punitive damages, reasonable attorneys' fees and costs of this action, and pre-judgment interest.

**Second Cause of Action**  
**Violation of Title VII, 42 U.S.C. §2000e *et seq.***  
**(Pregnancy-Related Hostile Work Environment on the Basis of Sex and Pregnancy)**  
**Against Defendant Employers**

75. Ms. Cunya re-alleges and incorporates by reference each and every allegation contained in the previous paragraphs of the complaint as though fully set forth herein.
76. By permitting ongoing, severe and pervasive practices of harassment, among other actions, on the basis of sex and/or pregnancy status, Defendant Employers discriminated against Ms. Cunya in violation of 42 U.S.C. § 2000e-2(a)(1); and § 2000e(k).
77. Defendant Employers' harassment altered Ms. Cunya's conditions of employment by creating an abusive working environment.



78. Defendant Employers' conduct was intentional, deliberate, willful, malicious, reckless and/or conducted with callous disregard of the rights of Ms. Cunya.

79. As a direct and proximate result of Defendant Employers' conduct, Ms. Cunya suffered damages and is entitled to damages for economic loss, physical and emotional distress, punitive damages, reasonable attorneys' fees and costs of this action, and pre-judgment interest.

**Third Cause of Action**  
**Violations of Title VII, 42 U.S.C. §2000e-2 (a)(1); and §2000e(k)**  
**(Discrimination in the Terms, Conditions, or Privileges of Employment Because of Sex**  
**and Pregnancy)**  
**Against All Defendants**

80. Ms. Cunya re-alleges and incorporates by reference each and every allegation contained in the previous paragraphs of the complaint as though fully set forth herein.

81. By failing to provide Ms. Cunya with legally mandated short-term disability benefit, among other actions, Defendants discriminated against her with respect to a term, condition or privilege of employment on the basis of sex and/or pregnancy status in violation of 42 U.S.C. § 2000e-2(a)(1); and § 2000e(k).

82. By failing to provide Ms. Cunya with legally mandated short-term disability benefit, among other actions, Defendants treated her differently in the receipt of an employment benefit because of pregnancy in violation of 42 U.S.C. § 2000e(k).

83. By implementing a policy or practice of unequal provision of a term, condition, or privilege of employment against Ms. Cunya, among other actions, Defendants engaged in discrimination on the basis of sex and/or pregnancy in violation of 42 U.S.C. § 2000e-2(a)(1); and § 2000e(k).

84. By failing to provide the class members that Ms. Cunya seeks to represent with legally mandated short-term disability benefit, among other actions, Defendants discriminated against the putative class with respect to a term, condition or privilege of employment on the basis of sex and/or pregnancy in violation of 42 U.S.C. § 2000e-2(a)(1); and § 2000e(k).

85. By failing to provide the class members that Ms. Cunya seeks to represent with legally mandated short-term disability benefit, among other actions, Defendants treated the putative class differently in the receipt of an employment benefit because of pregnancy in violation of 42 U.S.C. § 2000e(k).

86. By implementing a policy or practice of unequal provision of a term, condition, or privilege of employment against members of the class that Ms. Cunya seeks to represent, among other actions, Defendants engaged in discrimination on the basis of sex and/or pregnancy in violation of 42 U.S.C. § 2000e-2(a)(1); and § 2000e(k).

87. By implementing a policy or practice of discrimination with respect to a term, condition, or privilege of employment against members of the class that Ms. Cunya seeks to represent, among other actions, Defendants' actions have a disparate adverse impact on the basis of sex and/or pregnancy in violation of 42 U.S.C. § 2000e-2(a)(1); and § 2000e(k).

88. By reason of the continuous nature of Defendants' discriminatory conduct, which persisted throughout the employment of the Class Representative and members of the class, the Class Representative and all the members of the proposed class are entitled to application of the continuing violation doctrine to violations alleged herein.

89. Defendants acted intentionally, maliciously, willfully, deliberately, and/or with reckless indifference to the rights of Ms. Cunya individually, and on behalf of the putative class to be free from discrimination because of sex and pregnancy status.

90. As a direct and proximate result of Defendants' conduct, Ms. Cunha and all of the proposed class members suffered damages and are entitled to damages for loss of benefits, loss of income, physical and emotional distress, punitive damages, reasonable attorneys' fees and costs of this action, pre-judgment interest and all legal and equitable remedies available under 42 U.S.C. § 2000e *et seq.*; § 2000e(k).

**Fourth Cause of Action**  
**Violation of N.Y. Exec. Law §290 *et seq.***  
**(Failure to Promote Because of Sex and Pregnancy)**  
**Against Defendant Employers**

91. Ms. Cunha re-alleges and incorporates by reference each and every allegation contained in the previous paragraphs of the complaint as though fully set forth herein.

92. By failing to promote Ms. Cunha because of her sex and/or pregnancy status, among other actions, Defendant Employers discriminated against her in violation of N.Y. Exec. Law, § 296.

93. As a pregnant female employee, Ms. Cunha was a member of a protected class.

94. Ms. Cunha applied for and was qualified for the promotion to Housekeeping Supervisor.

95. Defendant Employers denied Ms. Cunha the promotion she sought.

96. Defendant Employers kept the position open and hired a male applicant and/or a non-pregnant candidate.

97. Defendant Employers were motivated entirely or in part by Ms. Cunha's sex and/or pregnancy status.

98. Defendant Employers' conduct was intentional, deliberate, willful, malicious, reckless and/or conducted with callous disregard for the rights of Ms. Cunha.



99. As a direct and proximate result of Defendant Employers conduct, Ms. Cunya suffered damages and is entitled to damages for economic loss, physical and emotional distress, punitive damages, reasonable attorneys' fees and costs of this action, and pre-judgment interest.

**Fifth Cause of Action**  
**Violation of N.Y. Exec. Law, §290 *et seq.***  
**(Pregnancy-Related Hostile Work Environment on the Basis of Sex and Pregnancy)**  
**Against Defendant Employers**

100. Ms. Cunya re-alleges and incorporates by reference each and every allegation contained in the previous paragraphs of the complaint as though fully set forth herein.

101. By permitting ongoing, severe and pervasive practices of harassment, among other actions, on the basis of sex and pregnancy status, Defendant Employers discriminated against Ms. Cunya in violation of N.Y. Exec. Law, § 296.

102. Defendant Employers' harassment altered Ms. Cunya's conditions of employment by creating an abusive working environment.

103. Defendant Employers conduct was intentional, deliberate, willful, malicious, reckless and/or conducted with callous disregard of the rights of Ms. Cunya.

104. As a direct and proximate result of Defendant Employers' conduct, Ms. Cunya suffered damages and is entitled to damages for economic loss, physical and emotional distress, punitive damages, reasonable attorneys' fees and costs of this action, and pre-judgment interest.

**Sixth Cause of Action**  
**Violations of N.Y. Exec. Law, §290 *et seq.***  
**(Discrimination in the Terms, Conditions or Privileges of Employment Because of Sex**  
**and Pregnancy)**  
**Against All Defendants**

105. Ms. Cunya re-alleges and incorporates by reference each and every allegation contained in the previous paragraphs of the complaint as though fully set forth herein.

106. By failing to provide Ms. Cunya with legally mandated short-term disability benefit, among other actions, Defendants discriminated against her with respect to a term, condition or privilege of employment on the basis of sex and/or pregnancy status in violation of N.Y. Exec. Law, § 296.

107. By implementing a policy or practice of unequal provision of a term, condition, or privilege of employment against Ms. Cunya, among other actions, Defendants engaged in discrimination on the basis of sex and/or pregnancy in violation of N.Y. Exec. Law, § 296.

108. By failing to provide the class members that Ms. Cunya seeks to represent with legally mandated short-term disability benefit, among other actions, Defendants discriminated against the putative class with respect to a term, condition or privilege of employment on the basis of sex and/or pregnancy status in violation of N.Y. Exec. Law, § 296.

109. By implementing a policy or practice of unequal provision of a term, condition, or privilege of employment against members of the class that Ms. Cunya seeks to represent, among other actions, Defendants engaged in discrimination on the basis of sex and/or pregnancy in violation of N.Y. Exec. Law, § 296.

110. By implementing a policy or practice of unequal provision of a term, condition, or privilege of employment against members of the class that Ms. Cunya seeks to represent,

among other actions, Defendants' actions have a disparate adverse impact on the basis of sex and/or pregnancy in violation of N.Y. Exec. Law, § 296.

111. By reason of the continuous nature of Defendants' discriminatory conduct, which persisted throughout the employment of the Class Representative and members of the class, the Class Representative and all the members of the proposed class are entitled to application of the continuing violation doctrine to violations alleged herein.

112. Defendants acted intentionally, maliciously, willfully, deliberately, and/or with reckless indifference to the rights of Ms. Cunya individually and of the putative class to be free from discrimination because of sex and/or pregnancy status.

113. As a direct and proximate result of Defendants' conduct, Ms. Cunya and all of the proposed class members suffered damages and are entitled to damages for loss of benefits, loss of income, physical and emotional distress, punitive damages, reasonable attorneys' fees and costs of this action, pre-judgment interest and all legal and equitable remedies available under N. Y. Exec. Law, § 296.

**Seventh Cause of Action**  
**Violation of N.Y. Gen. Business Law, §349**  
**(Unfair and Deceptive Practices)**  
**Against All Defendants**

114. Ms. Cunya re-alleges and incorporates by reference each and every allegation contained in the previous paragraphs of the complaint as though fully set forth herein.

115. By failing to provide Ms. Cunya with legally mandated short-term disability benefit, among other actions, Defendants engaged in unfair and deceptive practices proscribed by N.Y. Gen. Business Law, § 349.



116. By misrepresenting its legal obligations to provide short-term disability to Ms. Cunya, misleadingly indicating that she waived her right to a legally mandated benefit because she purportedly did not check off a box on a piece of paper, and by undermining public policy in favor of affording a pregnant employee short-term disability benefit, Defendants engaged in unfair and deceptive practices proscribed by N.Y. Gen. Business Law, § 349.

117. Ms. Cunya has been harmed by Defendants materially misleading and deceptive practices.

118. Ms. Cunya is entitled to her actual damages or up to three times the actual amount as provided by the statute.

#### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff, Ms. Cunya, requests the following relief:

A. A Declaratory judgment that the actions, conduct, policies and/or practices of Defendants complained of herein violate Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2(a)(1); 42 U.S.C. § 2000e(k); N.Y. Exe. Law, § 290, *et seq.*, and N.Y. Gen. Business Law, § 349;

B. An injunction and order permanently restraining Defendants and their partners, officers, owners, agents, successors, employees and/or representatives, and any and all persons acting in concert with them, from engaging in any such further unlawful conduct, including the policies and/or practices complained of herein;

C. As to Counts Three and Six, a certification of the claims relating to unequal provision of a term, condition or privilege of employment violative of 42 U.S.C. § 2000e-2(a)(1) and §2000e(k); and N.Y. Exe. Law, § 290, as a class action maintainable under the Federal Rules

of Civil Procedure Rule 23 (a), (b)(1), (b)(2) and/or (b)(3), on behalf of the proposed plaintiff class, and designation of the proposed Class Representative as representative of this class, and their counsel of record as class counsel;

D. An award of damages against Defendants, or any joint or severally liable entity or person, in an amount to be determined at trial, plus prejudgment interest, to compensate Ms. Cunya, individually, and on behalf of the class she seeks to represent, for all monetary and/or economic damages, including back pay and lost benefits;

E. An award of damages against Defendants, or any joint or severally liable entity or person, in an amount to be determined at trial, plus prejudgment interest, to compensate Ms. Cunya, individually, and on behalf of the class she seeks to represent, for all non-monetary and/or compensatory damages, including, but not limited to, compensation for emotional distress;

F. An award of punitive damages, and any applicable penalties in an amount to be determined at trial;

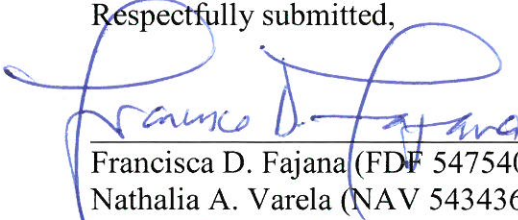
G. An award of up to three times the actual damages pursuant to Ms. Cunya's claims under N.Y. Gen. Business Law, §349;

H. An award of litigation costs and expenses, including reasonable attorneys' fees and costs to the fullest extent permitted by law; and

I. Such other and further relief as the Court may deem just and proper.

Dated: November 9, 2018  
New York, New York

Respectfully submitted,



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