NEW YORK STATE SUPREME COURT
ORLEANS COUNTY

KAITLYN HOOVER and LEIGHA KLOPP, *on behalf of themselves and all persons similarly-situated*, Plaintiffs,	:	Index No.: 18-44970
v.	:	**VERIFIED CLASS ACTION COMPLAINT**
WAL-MART ASSOCIATES, INC., WAL-MART STORES EAST, INC., and WAL-MART STORES EAST, LP, Defendants.	:	**Jury Trial Demanded**

Plaintiffs Kaitlyn Hoover and Leigha Klopp (collectively, "Plaintiffs") by and through undersigned counsel, A Better Balance, as and for their Verified Complaint in this action against Defendant Wal-Mart Associates, Inc., Defendant Wal-Mart Stores East, Inc., and Defendant Wal-Mart Stores East, LP (together, "Defendants" or "Walmart") hereby allege:

NATURE OF THE CLAIMS

1. Walmart maintains a brutal absence control system that punishes workers for any unscheduled absence, regardless of whether it may be protected by law. This system is particularly harmful to pregnant workers, as Kaitlyn Hoover and Leigha Klopp can attest. They experienced the effects of Walmart's punitive and unlawful policy when they incurred disciplinary "points" for time off they each took for pregnancy-related conditions, despite the fact that such leave is explicitly protected under New York State law. Those points were later used as a basis to terminate them, demonstrating that Walmart is both flouting the law and frustrating its purpose of protecting pregnant New Yorkers from being forced out or fired when they need a temporary, reasonable accommodation in order to stay on the job.

2. Three-quarters of women entering today's workforce will become pregnant while

employed; most will continue working well into their ninth month of pregnancy, demonstrating time and again that pregnancy is not incompatible with workplace demands. But many pregnant workers need minor accommodations – including limited time off for pregnancy-related medical needs[1] – to continue working and maintain a healthy pregnancy. Too frequently, large corporations like Walmart simply refuse to make these accommodations, relying on outdated attitudes about pregnancy in the workplace.[2]

3. In response, 23 states and 5 cities – including the State of New York – have emphatically sided with pregnant workers, enshrining in their laws that these workers are presumptively entitled to reasonable accommodations on the job. These state and local laws were designed, and are being used, to protect women in need of accommodation, including reasonable time off during pregnancy to address pregnancy-related conditions.

4. Walmart violated Plaintiffs' rights under the New York Pregnant Workers Fairness Act, N.Y. Exec. Law §§ 292, 296(3)(a) (the "PWFA") when it was aware that they were pregnant, knew that they needed time off for their pregnancy-related conditions, and then refused to authorize their absences for pregnancy-related conditions without having engaged in any

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[1] "[P]regnancy-related conditions need not meet any definition of disability to trigger an employer's obligation to accommodat[e] under this Law. Any medically-advised restrictions or needs related to pregnancy will trigger the need to accommodate . . . ." N.Y. DIVISION OF HUMAN RIGHTS, GUIDANCE ON PREGNANCY DISCRIMINATION AND REASONABLE ACCOMMODATION OF PREGNANCY-RELATED CONDITIONS FOR EMPLOYERS IN NEW YORK STATE 3 (hereinafter "DHR Pregnancy Accommodation Guidance"), https://dhr.ny.gov/sites/default/files/pdf/guidance-pregnancy-discrimination-employers.pdf.

[2] *See, e.g.*, Natalie Kitroeff and Jessica Silver-Greenberg, *Pregnancy Discrimination Is Rampant Inside America's Biggest Companies*, N.Y. TIMES, June 15, 2018, https://www.nytimes.com/interactive/2018/06/15/business/pregnancy-discrimination.html (detailing four stories of pregnancy discrimination, including two at Walmart);
Natalie Kitroeff, *New York to Investigate Claims of Pregnancy Discrimination at 4 Companies*, N.Y. TIMES, June 27, 2018, https://mobile.nytimes.com/2018/06/27/business/pregnancy-discrimination-investigate-subway.html (describing New York Governor Andrew Cuomo's now pending investigation into the companies described as violating the law in the June 15, 2018 article).

interactive process to determine whether doing so would have been an undue hardship – and ultimately terminated them for those absences. Plaintiffs bring this action to make clear that no employer – including Walmart – is above the law.

PARTIES

5. **Plaintiff Kaitlyn Hoover** is a former employee of Walmart and resident of Orleans County, New York. She was employed as a jewelry associate at the Walmart Supercenter located at 13858 State Route 31 in Albion, New York (the "Albion Store"), from in or around August 2016 to in or around March 2017. At all relevant times she was an "employee" or "covered employee" under all relevant statutes.

6. **Plaintiff Leigha Klopp** is a former employee of Walmart and resident of Orleans County, New York. She was employed as a "soft liner" and "zoner" at the Albion Store from in or around October 2016 to in or around March 2017. At all relevant times she was an "employee" or "covered employee" under all relevant statutes.

7. **Defendant Wal-Mart Associates, Inc**. is a Delaware Corporation with its headquarters in Bentonville, Arkansas. It is registered to conduct business in New York and has appointed an agent located at 111 Eighth Avenue, New York, NY 10011 to receive process. Wal-Mart Associates, Inc. is a mass merchandiser of consumer products operating retail stores throughout the world. Wal-Mart Associates, Inc. is the largest private employer in the United States, employing more than 1.5 million associates in the United States at more than 5,000 stores and clubs nationwide. Upon information and belief, it has approximately 100 stores in the State of New York. At all relevant times, Wal-Mart Associates, Inc. met the relevant definition of "employer" and/or a "covered employer" under all relevant statutes. The acts set forth in this

Complaint were authorized, ordered, performed, approved, and/or ratified by Wal-Mart Associates, Inc. and/or its agents, employees, and/or representatives.

8. **Defendant Wal-Mart Stores East, Inc.** is an Arkansas Corporation with its headquarters in Bentonville, Arkansas. It is registered to conduct business in New York and has appointed an agent located at 111 Eighth Avenue, New York, NY 10011 to receive process. At all relevant times, Wal-Mart Stores East, Inc. met the relevant definition of "employer" and/or a "covered employer" under all relevant statutes. The acts set forth in this Complaint were authorized, ordered, performed, approved, and/or ratified by Wal-Mart Stores East, Inc. and/or its agents, employees, and/or representatives.

9. **Defendant Wal-Mart Stores East, LP** is a Delaware Limited Partnership with its headquarters in Little Rock, Arkansas. It is registered to conduct business in New York and has appointed an agent located at 111 Eighth Avenue, New York, NY 10011 to receive process. At all relevant times, Wal-Mart Stores East, LP met the relevant definition of "employer" and/or a "covered employer" under all relevant statutes. The acts set forth in this Complaint were authorized, ordered, performed, approved, and/or ratified by Wal-Mart Stores East, LP and/or its agents, employees, and/or representatives.

FACTUAL ALLEGATIONS

I. WALMART'S ABSENCE CONTROL POLICY

A. The Points System

10. Walmart employs a "no-fault" absence control policy, under which its hourly employees accumulate points (termed "occurrences") for each occasion on which they miss a scheduled shift, arrive late, or leave early without advance approval from a supervisor or

manager. If the number of points incurred reaches a certain threshold, employees may be disciplined and/or terminated.

11. Under Walmart's "Attendance/Punctuality Policy" in place at the time Plaintiffs began their employment with Walmart (hereinafter the "Policy"), hourly employees incur one occurrence, or "point," for each full shift they missed, and one half of an occurrence for each incomplete shift (arriving late or leaving early by ten minutes or more).

12. New employees who accumulate four occurrences in their first six months of employment are at risk of being terminated, and all other employees are at risk of being terminated if they have accumulated nine occurrences in a rolling six-month period.

13. The written Policy explains that absences for certain reasons can be deemed "authorized," and those absences will not result in disciplinary action. Although the list includes more than a dozen reasons that an absence may be authorized, absences needed because of pregnancy-related conditions do not appear on it.

14. Plaintiffs were not advised of their rights under the PWFA, nor were they ever told that absences for pregnancy-related conditions are protected by law.

B. <u>Reporting Absences</u>

15. Walmart employees are instructed to report their unplanned absences in one of the following ways: (1) by telephoning the Associate Information Line, where a pre-recorded message prompts them to select one of several reasons for their absence; (2) by utilizing the Walmart One App, which also prompts them to select one of several reasons for their absence; or (3) by telephoning the store directly and speaking with a manager.

16. Neither the Associate Information Line nor the Walmart One App permit an employee to specify that an absence is for a pregnancy-related condition.

17. Upon information and belief, when employees telephone a Walmart store to report their absence, they are consistently told that absences for pregnancy-related conditions cannot be authorized and that they will incur points if they cannot appear for their scheduled shift.

18. Thus, in practice, Walmart makes no effort to discern whether an employee's absence is protected by the PWFA, nor does it have appropriate systems in place for doing so. As a result, it regularly assesses points against workers when they need to miss work for pregnancy-related conditions.

19. Upon information and belief, the same Policy operates at every Walmart store in the United States,[3] including each of its locations in New York State, and it is systematically applied in a way that violates New York State law.

II. KAITLYN HOOVER

A. Background

20. In or about August 2016, Ms. Hoover began working as a jewelry associate at the Albion Store.

21. Ms. Hoover was an hourly employee and she was paid approximately $11.15 per hour.

22. Ms. Hoover's job responsibilities included stocking, organizing, and returning discarded merchandise; assisting customers with purchases; and operating the cash register.

[3] *See generally* A BETTER BALANCE, POINTING OUT: HOW WALMART UNLAWFULLY PUNISHES WORKERS FOR MEDICAL ABSENCES (2017), https://www.abetterbalance.org/wp-content/uploads/2017/05/Pointing-Out-Walmart-Report-FINAL.pdf.

B. Ms. Hoover's Absence for Pregnancy-Related Conditions

23. In or around early March 2017, Ms. Hoover learned that she was approximately four weeks pregnant.

24. Ms. Hoover immediately shared the news with her assistant manager, Katie Geist, and another manager, Bethany Heffler, a few days later.

25. Within a few weeks of learning she was pregnant, Ms. Hoover began to feel extremely nauseous. She was vomiting continuously, and she could not eat anything for three days straight.

26. She also had difficulty ingesting fluids. Ms. Hoover became so dehydrated that she became concerned about the health of her pregnancy.

27. Dehydration is particularly dangerous during pregnancy because it can lead to low levels of amniotic fluid or even preterm labor.

28. On or about March 17, 2017, Ms. Hoover called the Albion Store in the morning and spoke with Ms. Heffler, the only manager available at the time, to let her know that she was not going to be able to appear for her scheduled shift.

29. Ms. Hoover explained that she needed to go to the hospital because she was worried about the baby, as she had been vomiting continuously and she needed fluids.

30. At this point, Walmart was on notice that Ms. Hoover was suffering from a pregnancy-related condition for which an accommodation may be required.

31. Ms. Heffler made no effort to engage in the interactive process with Ms. Hoover to determine whether Walmart could excuse her absence as a reasonable accommodation to permit Ms. Hoover to perform her job.[4]

32. Instead, Ms. Heffler told Ms. Hoover that if she went to the hospital, it would "count against [her]," meaning that Ms. Hoover would incur a point for an unauthorized absence.

33. By March 2017, Ms. Hoover had accumulated 8.5 points for absences related to another medical condition that she had experienced before her pregnancy.

34. Ms. Hoover knew that if she accumulated any more points she would likely be terminated, but, fearing for the health of her pregnancy, she felt that she had no choice. She again told Ms. Heffler that she needed to go to the hospital.

35. Ms. Hoover went to the hospital that day, and she spent four hours there.

36. At the hospital, Ms. Hoover was prescribed several medications to help with her nausea, but she could not keep any of them down, and immediately vomited them up before they could take effect. She eventually received nausea medication and fluids intravenously.

37. Ms. Hoover's illness was later diagnosed as hyperemesis gravidarum, an extremely severe form of nausea that impacts a small percentage of women during pregnancy.

C. Ms. Hoover's Termination

38. When Ms. Hoover returned to Walmart for her next scheduled shift on or about March 19, 2017, she brought her paperwork from the hospital with her in her car.

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[4] *See* DHR Pregnancy Accommodation Guidance, *supra* note 1, at 3 ("As indicated in the reasonable accommodation regulations at 9 NYCRR 466.11(j) and (k), the employer and employee should engage in an interactive process to determine what reasonable accommodation can be provided by the employer that will permit the employee to perform in a reasonable manner the activities involved in the job."). Specifically, once the need for the accommodation is known, employers have an obligation to consider whether it can be made, and to request medical documentation from the employee if it is needed. *See* 9 N.Y.C.R.R. § 466.11(j)(4).

39. She tried to clock in but was prevented from doing so and prompted by the system to speak with a manager.

40. Ms. Hoover went to the office in the back of the store, where Ms. Geist and Ms. Heffler were both seated.

41. Ms. Geist told Ms. Hoover that she had been terminated for accumulating "too many" points.

42. Ms. Hoover again explained that she was unable to work her scheduled shift on or about March 17th because of her pregnancy-related condition that she had previously detailed to Ms. Heffler on the phone.

43. Ms. Hoover then offered to give them the paperwork from the hospital.

44. Ms. Geist outright refused to look at the paperwork and again failed to engage in an interactive process to determine whether Ms. Hoover's absence could be authorized as a reasonable accommodation.

45. Ms. Geist told Ms. Hoover that her absence was not excusable and stated, unequivocally, "We," referring to Walmart, "don't take doctors' notes."

46. Ms. Hoover had accumulated her ninth point, or occurrence, for her absence when she went to the hospital on March 17, 2017 due to her pregnancy-related condition.

47. Had that absence been authorized, Ms. Hoover would not have been terminated.

48. Finding herself unemployed with a child on the way, Ms. Hoover was devastated. She has actively searched for jobs but has been unable to find comparable employment. Ms. Hoover has suffered significant financial and emotional harm as a result of Walmart's unlawful actions.

III. LEIGHA KLOPP

A. Background

49. In or about October 2016, Ms. Klopp began working as a "soft liner" and "zoner" in the apparel department at the Albion Store.

50. Ms. Klopp was an hourly employee and she was paid approximately $9.75 per hour.

51. Ms. Klopp's job responsibilities included folding and organizing clothes across all sections of the apparel department.

52. Ms. Klopp would also occasionally "zone" in other departments when she was asked to do so. On those occasions, she would re-shelve and organize the merchandise and ensure that everything was orderly in the department.

B. Ms. Klopp's Absences for Pregnancy-Related Conditions

53. In or about the end of December 2016, Ms. Klopp learned that she was approximately eight weeks pregnant.

54. In early January, Ms. Klopp shared the news with her co-workers, including Ms. Hoover, and with her assistant manager, Katie Geist.

55. On or about January 20, 2017, Ms. Klopp began to feel very sick at work. She was dizzy and she was experiencing severe cramps and a sharp pain in her side. Not knowing the cause of the pain, she became worried that she might be having a miscarriage.

56. Ms. Klopp told two supervisors, Mike Fabiano and Bethany Heffler, that she needed to go to the hospital.

57. Ms. Klopp told both Mr. Fabiano and Ms. Heffler that she was pregnant, and that

she was feeling sick and she needed to go to the hospital because she was worried about the health of her pregnancy.

58. Showing no concern for Ms. Klopp's health or the health of her pregnancy, Mr. Fabiano told her that it would be "marked against [her]" if she left her shift early, meaning that Ms. Klopp would incur a point for an unauthorized absence.

59. Neither Mr. Fabiano nor Ms. Heffler made any effort to engage in the interactive process with Ms. Klopp to determine whether Walmart could excuse her absence as a reasonable accommodation to permit Ms. Klopp to continue to perform her job.

60. By that point in January 2017, Ms. Klopp had accumulated two points for absences related to another medical condition that she had experienced before her pregnancy. She was concerned about accumulating more points, but, fearing for the health of her pregnancy, she felt that she had no choice but to leave her shift and go to the hospital.

61. Ms. Klopp left her shift early, and she went directly to the hospital. This occurred on a Friday.

62. Ms. Klopp stayed at the hospital for over five hours. She was given an IV and anti-nausea medication.

63. Ms. Klopp's doctors advised her to rest through the following Monday, and they gave her a note with that recommendation.

64. Ms. Klopp was scheduled to work on Sunday and Monday. On or about Saturday, January 21, 2017, she called the Albion Store directly to report her absences.

65. Ms. Klopp spoke with a manager and explained that she was unable to appear for her scheduled shifts because of her pregnancy-related condition as noted by her doctors. She said that she would bring a doctor's note with her when she returned to work.

66. When she returned to work on Tuesday, Ms. Klopp brought the note from her doctor. When Ms. Klopp attempted to give the note to Cherry Hodge, the store manager, Ms. Hodge put her hand up to stop Ms. Klopp and said, "I don't want that."

67. Ms. Klopp received one-half of a point, or occurrence, for leaving her shift early the previous Friday when she went to the hospital due to her pregnancy-related condition.

68. In or about March 2017, Ms. Klopp woke up very sick one morning and she was vomiting blood. Terrified, she called her obstetrician, who told her that she needed to go to the hospital.

69. Ms. Klopp was scheduled to work that day, so she called the Albion Store.

70. Ms. Klopp spoke with Jenny Doty, the front-end manager at the Albion Store, and explained that she would need to miss her shift that day because she was very ill. She explained that she was going to the hospital at the direction of her obstetrician.

71. Ms. Doty said, "We're still going to have to mark a point off." She also told Ms. Klopp that if she did not come in for her shift she would have "too many points" and she would be terminated.

72. Ms. Klopp reiterated that her obstetrician had told her that she needed to go to the hospital, and she said that she could bring in a note to confirm this.

73. Ms. Doty did not relent, nor did she make any effort to engage in the interactive process with Ms. Klopp to determine whether Walmart could excuse her absence as a reasonable accommodation.

74. Again believing that she had no choice, Ms. Klopp went to the hospital.

75. At the hospital, Ms. Klopp was given an IV and anti-nausea medication.

C. Ms. Klopp's Termination

76. When she returned to work for her next scheduled shift, on or about March 8, 2017, Ms. Klopp attempted to give the doctor's note to Ms. Doty, but she refused to take it.

77. Ms. Doty and Mr. Fabiano walked Ms. Klopp back to the office, where they told her that she had been terminated.

78. Ms. Doty explained that Ms. Klopp was being terminated because she had "too many" points.

79. Upon information and belief, Ms. Klopp had approximately 3.5 points, or occurrences, at the time.

80. One and a half of those points had been assessed because of Ms. Klopp's absences for pregnancy-related conditions. Had those absences been authorized, Ms. Klopp would not have been terminated.

81. After she was terminated, Ms. Klopp contacted a Walmart corporate hotline to contest the termination decision because she believed that her absences should have been excused. She was told by a Walmart representative that the company, as a policy, did not accept doctors' notes.

82. Finding herself unemployed with a child on the way, Ms. Klopp was devastated. Although she actively searched for jobs, Ms. Klopp was unemployed for more than a year. Ms. Klopp has suffered significant financial and emotional harm as a result of Walmart's unlawful actions.

IV. WALMART FAILED TO EVEN CONSIDER WHETHER PLAINTIFFS COULD BE ACCOMMODATED

83. Time off to seek medical attention or to recover from pregnancy-related conditions is explicitly contemplated as a reasonable accommodation under the PWFA.[5]

84. Nevertheless, Walmart failed to even consider whether an accommodation could be made for Ms. Hoover or Ms. Klopp.

85. Once the need for Plaintiffs' accommodations became known, Walmart had a duty to consider whether they could be made. If Walmart required documentation from Plaintiffs to verify their need for leave, it had a duty to clearly request it.[6]

86. By refusing to engage in the interactive process with Plaintiffs and refusing to accept doctors' notes when they were offered, Walmart failed to comply with its basic obligations as an employer.

87. Moreover, excusing Plaintiffs' absences for pregnancy-related conditions would not have imposed an undue hardship on the operation of Walmart's business. Walmart's hourly associates, including Plaintiffs, are cross-trained to perform multiple functions across a given store, and it is common for Walmart employees to fill in for other positions as needed.

88. Indeed, Plaintiffs were regularly required to work in different departments, and many Walmart employees could perform Plaintiffs' respective job functions.

89. Upon information and belief, other managers at the Walmart store where Plaintiffs worked had authorized absences for other workers that were not related to pregnancy.

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[5] *See* DHR Pregnancy Accommodation Guidance, *supra* note 1, at 3; *see also* New York State, *Pregnancy Rights for Employees in the Workplace*, https://www.ny.gov/working-while-pregnant-know-your-rights/pregnancy-rights-employees-workplace ("As of January 2016, New York state law explicitly guarantees pregnant workers the right to reasonable accommodations for any pregnancy-related conditions, including . . . leave for related medical needs . . . .").

[6] *See* 9 N.Y.C.R.R. § 466.11(j)(4).

V. WALMART SYSTEMATICALLY FAILS TO ACCOMMODATE PREGNANT WORKERS

90. Walmart has engaged in a continuing pattern and/or practice of failing to excuse the absences of pregnant employees when they are ill or need to seek medical treatment, as salaried members of management consistently tell employees that their absences for pregnancy-related conditions are not excusable and that Walmart will not accept doctors' notes.

91. Plaintiffs have observed that other members of the Proposed Class (defined below) have suffered nearly identical violations of their rights under the PWFA.

92. Upon information and belief, such violations are widespread across all of Walmart's New York stores.

93. Walmart could take a number of steps, at little or no cost to the company, to ensure that absences for pregnancy-related conditions are authorized and do not lead to disciplinary action. These actions include, but are not limited to:

a. Explicitly identifying pregnancy-related conditions as a reason for authorized absences in Walmart's written Policy;

b. Including an option in the pre-recorded message on the Associate Information Line for employees to indicate that their absence is pregnancy-related, or prompting them to leave a voicemail or speak to a manager about their need for leave in order to capture sufficient information to determine whether the absence is covered by the PWFA;

c. Including an option in the Walmart One App for employees to indicate that their absence is pregnancy-related;

d. Providing training to Walmart managers on their responsibilities under the PWFA; and

e. Providing training to all new and current employees on a regular basis in New York stores regarding their rights under the PWFA.

CLASS ACTION ALLEGATIONS

I. CLASS DEFINITION

94. This is a class action pursuant to CPLR §§ 901 *et seq*, brought by Plaintiffs (the "Proposed Class Representatives") on behalf of a Proposed Class of similarly-situated current and/or former employees of Walmart (the "Proposed Class"). The Proposed Class (subject to future revision as may be necessary) is defined as follows:

> All pregnant women employed as hourly associates by Walmart in New York State from July 24, 2015 up to and including the date of any judgment in this case who incurred occurrences because of absences due to pregnancy-related conditions.

II. NUMEROSITY AND IMPRACTICALITY OF JOINDER

95. The members of the Proposed Class are sufficiently numerous to make joinder of their claims impracticable. While the exact number of Proposed Class members is unknown because such information is in the exclusive control of Defendants, Walmart operates approximately 100 stores in the State of New York, and, upon information and belief, there are hundreds of current and former employees who have been pregnant during their employment with Walmart and suffered from the same unlawful conduct and adverse employment actions described herein.

96. Although precise determination of the number of Proposed Class members is not possible at this time, it is significant and satisfies the numerosity requirement of CPLR § 901(a)(1).

III. COMMON QUESTIONS OF LAW AND FACT

97. The claims alleged on behalf of Plaintiffs and the Proposed Class raise questions of law and fact common to all Plaintiffs and Proposed Class members. Chief among these questions is as follows:

- Whether Defendants' absence control policy contains any mechanism for managers to determine whether employees' absences are protected by the PWFA;

- Whether Defendants had a pattern, practice, and/or policy of refusing to accept doctors' notes when employees were absent for medical reasons, including those related to pregnancy; and

- Whether Defendants had a pattern, practice, and/or policy of refusing to authorize leave for Plaintiffs and the Proposed Class as a reasonable accommodation for their pregnancy-related conditions, where such leave did not impose an undue hardship.

98. Thus, the common question requirement of CPLR § 901(a)(2) is satisfied.

IV. TYPICALITY OF CLAIMS AND RELIEF SOUGHT

99. Plaintiffs are members of the Proposed Class they seek to represent.

100. The claims of Plaintiffs are typical of the claims of the Proposed Class in that they all arise from the same unlawful patterns, practices and/or policies of Defendants, and are based on the legal theory that these patterns, practices and/or policies violate legal rights.

101. Plaintiffs and the members of the Proposed Class all allege that they were denied leave for pregnancy-related conditions as a reasonable accommodation under the PWFA, and were penalized when they took such leave by incurring points, or occurrences, that could lead to disciplinary action and/or termination.

102. The relief that Plaintiffs seek for Defendants' unlawful patterns, practices and/or policies is typical of the relief which is sought on behalf of the Proposed Class.

103. Thus, the typicality requirement of CPLR § 901(a)(3) is satisfied.

V. ADEQUACY OF REPRESENTATION

104. The interests of Plaintiffs are co-extensive with those of the Proposed Class they seek to represent in the instant case.

105. Plaintiffs are willing and able to represent the Proposed Class fairly and vigorously as they pursue their similar individual claims.

106. Plaintiffs have retained counsel who are qualified and experienced in employment class action litigation and who are able to meet the demands necessary to litigate a class action of this size and complexity.

107. The combined interests, experience, and resources of Plaintiffs and their counsel to competently litigate the individual and Class claims at issue in the instant case satisfy the adequacy of representation requirement of CPLR § 901(a)(4).

VI. REQUIREMENTS OF CPLR §§ 901 *ET SEQ.*

108. Without class certification, the same evidence and issues would be subject to relitigation in a multitude of individual lawsuits with an attendant risk of inconsistent adjudications and conflicting obligations. Specifically, all evidence of Defendants' patterns, practices and/or policies and the issue of whether they are in violation of state law would be exchanged and litigated repeatedly.

109. Accordingly, certification of the Proposed Class is the most efficient and judicious means of presenting the evidence and arguments necessary to resolve such questions for Plaintiffs, the Proposed Class, and Defendants.

110. The cost of proving Defendants' violations of the PWFA makes it impracticable for Plaintiffs and the members of the Proposed Class to pursue their claims individually.

111. Defendants have acted or have refused to act on grounds generally applicable to the members of the Proposed Class, making final injunctive and declaratory relief appropriate with respect to the Proposed Class as a whole.

112. The common issues of fact and law affecting Plaintiffs' claims and those of the members of the Proposed Class, including, but not limited to, the common issues identified above, predominate over any issues affecting only individual claims.

113. A class action is superior to other available means of the fair and efficient adjudication of Plaintiffs' claims and the claims of the members of the Proposed Class.

114. There will be no difficulty in the management of this action as a class action.

115. By filing this Complaint, Plaintiffs are preserving the rights of members of the Proposed Class with respect to the statute of limitations on their claims. Therefore, not certifying a class would substantially impair and/or impede the other members' ability to protect their interests.

COUNT I:
VIOLATION OF THE PWFA
New York State Human Rights Law, New York Exec. Law § 296(3)(a)
Refusal to Provide Reasonable Accommodations

116. Plaintiffs reallege and incorporate by reference, as if fully set forth herein, each and every allegation of this Complaint.

117. As set forth herein, Plaintiffs were at all times relevant to this action employees, and Defendants employers, under the PWFA.

118. Defendants violated the PWFA by refusing to provide Plaintiffs and members of the Proposed Class, otherwise qualified individuals whose ability to perform the functions of their jobs were affected by pregnancy-related conditions, with leave that did not pose undue hardship.

119. Defendants failed to engage in an interactive process with Plaintiffs and members of the Proposed Class to identify the limitations resulting from their pregnancy-related conditions and potential accommodations that could overcome those limitations.

120. As a result of Defendants' unlawful practices, Plaintiffs and members of the Proposed Class have suffered significant monetary loss, including loss of earnings and other benefits; emotional pain and suffering; and other nonpecuniary losses.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that the Court enter judgment in their favor and against Defendants for the following relief:

A. Certification of the case as a class action maintainable under CPLR §§ 901 *et seq*., on behalf of the Proposed Class;

B. Designation of Plaintiffs as representatives of the Proposed Class;

C. Designation of Plaintiffs' counsel as Class Counsel for the Proposed Class;

D. A declaratory judgment that the actions, conduct, and practices of Defendants complained of herein violate the laws of the State of New York;

E. 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 practices complained of herein;

F. An award of damages against Defendants, in an amount to be determined at trial, plus interest, to compensate Plaintiffs and the Proposed Class for all monetary and/or economic damages, including, but not limited to, loss of past and future income, wages, compensation, seniority, and other benefits of employment;

G. An award of damages against Defendants, in an amount to be determined at trial, plus interest, to compensate Plaintiffs and the Proposed Class for all non-monetary and/or

compensatory damages, including, but not limited to, compensation for Plaintiffs' emotional distress;

H. An award of damages for any and all other monetary and/or non-monetary losses suffered by Plaintiffs and the Proposed Class, including, but not limited to, loss of income, reputational harm, and harm to professional reputation, in an amount to be determined at trial, plus interest;

I. Prejudgment interest on all amounts due;

J. An award of costs that Plaintiffs have incurred in this action, including, but not limited to, expert witness fees, as well as Plaintiffs' reasonable attorneys' fees and costs to the fullest extent permitted by law; and

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

JURY DEMAND

Plaintiffs hereby demand a trial by jury on all issues of fact and damages stated herein.

Dated: July 24, 2018

Respectfully Submitted,

A BETTER BALANCE

By: _____

Dina L. Bakst
Elizabeth J. Chen
Christine T. Dinan *(pending admission)*
Sarah J. Brafman

40 Worth Street, 10th Floor
New York, NY 10013
Telephone: 212-430-5982
dbakst@abetterbalance.org
echen@abetterbalance.org
cdinan@abetterbalance.org
sbrafman@abetterbalance.org

Attorneys for Plaintiffs and Proposed Class Counsel

VERIFICATION

Kaitlyn Hoover, being duly sworn, deposes and says:

I am one of the Plaintiffs in the above-entitled action. I have read the foregoing Complaint and know the contents thereof. The same are true to my knowledge, except as to matters therein stated to be alleged on information and belief and as to those matters, I believe them to be true.

To the best of my knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, the presentation of these papers or the contentions therein are not frivolous as defined by Subsection (c) of Section 130-1.1 of the Rules of the Chief Administrative Judge (22 NYCRR).

Kaitlyn Hoover, Plaintiff

Sworn to before me this 20th day of July, 2018

Notary Public

ELIZABETH J. CHEN
Notary Public, State of New York
No. 02CH6322065
Qualified in Westchester County
Commission Expires March 30, 2019

VERIFICATION

Leigha Klopp, being duly sworn, deposes and says:

I am one of the Plaintiffs in the above-entitled action. I have read the foregoing Complaint and know the contents thereof. The same are true to my knowledge, except as to matters therein stated to be alleged on information and belief and as to those matters, I believe them to be true.

To the best of my knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, the presentation of these papers or the contentions therein are not frivolous as defined by Subsection (c) of Section 130-1.1 of the Rules of the Chief Administrative Judge (22 NYCRR).

Leigha Klopp, Plaintiff

Sworn to before me this 23rd day of July, 2018

Notary Public

ELIZABETH J. CHEN
Notary Public, State of New York
No. 02CH6322065
Qualified in Westchester County
Commission Expires March 30, 2019