

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

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MICHELLEE ALFONSO,

Index No.

Plaintiffs,

**VERIFIED
COMPLAINT**

-against-

POPEYE'S CHICKEN & BISCUITS, INC
1422 FULTON STREET, 1560 CHICKEN
ENTERPRISES, INC, ANN NASARY and
"JANE DOE"
(fictitious names representing unknown
owners, business partners, and other officials in
connection with the aforementioned corporation),

Defendants.

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Plaintiff, MICHELLEE ALFONSO, by her attorneys, THE LAW OFFICE OF RENÉ

MYATT, complaining of the defendants, above-named, respectfully set forth and allege, upon
information and belief as follows:

THE PARTIES

1. Plaintiff MICHELLEE ALFONSO (hereinafter referred to as "ALFONSO") is a natural person residing at 1615 Fulton Street, Apt. B612, Brooklyn, New York, 11213 and still is a resident of Kings County in the State of New York.
2. Defendant POPEYE'S CHICKEN & BISCUITS, INC (hereinafter referred to as "POPEYE'S") is a food service establishment duly licensed, incorporated and doing business in the State of New York, located at 1422 Fulton Street, Brooklyn, New York, 11216, and subject to the jurisdiction of its courts.
3. Defendant 1560 CHICKEN ENTERPRISES, INC. (hereinafter referred to as "ENTERPRISES") is a duly licensed corporation doing business in the State of New

York, located at 1560 Broadway, Brooklyn, New York, 11221, and subject to the jurisdiction of its courts.

4. Defendant **ANN NASARY**, (hereinafter referred to as "**NASARY**") is a natural person designated as the Chief Executive Officer and Owner of **POPEYE'S** residing at 2 Mansion Drive, Old Westbury, New York, 11568 and upon information and belief still is a resident of Nassau County in the State of New York.

JURISDICTION AND VENUE

5. Venue is set in Kings County where plaintiff resides and where the alleged incident, the cause of this action, occurred.
6. Defendant **POPEYE'S** is a duly licensed corporation doing business in the State of New York for purposes of jurisdiction, pursuant to the Civil Practice Law and Rules ("CPLR") §§ 301 and 311(a)(1).
7. Defendant **ENTERPRISES** is a duly licensed corporation doing business in the State of New York for purposes of jurisdiction, pursuant to CPLR §§ 301 and 311(a)(1).
8. Defendant **NASARY** is a resident of the State of New York for purposes of jurisdiction, pursuant to CPLR §301.
9. This Court has original personal jurisdiction over this matter, exclusive of interest and costs.

FACTS

10. On or about the 31st day of July 2009, Ms. **ALFONSO** goes to **POPEYE'S** to order a chicken value meal.
11. After Ms. **ALFONSO** orders her meal, she bites into the chicken with it in her mouth, and on her tongue she exclaims, "Ew! That taste funny," and spits it out. She tastes that

- the chicken has a mustardy taste to it. She observes that the chicken looked purple and brown in color.
12. Ms. **ALFONSO** proceeds to peel the skin off the chicken and then cuts it open, at which point, much to her horror, she sees a tail attached to the hind part of a rat.
 13. At the sight of this rat tail, Ms. **ALFONSO** becomes nauseous and ill.
 14. Defendants are in the business of advertising, amongst other things, chicken value meals to the general public. As such, Ms. **ALFONSO** was misled to believe she was ordering chicken when in fact **POPEYE'S** is selling rats.
 15. That upon said discovery, Ms. **ALFONSO** immediately brings the incident to **POPEYE'S** attention that she got something other than what she wanted. **POPEYE'S** employees were rude, standoffish and unprofessional with Ms. **ALFONSO**. The only thing that the employees of **POPEYE'S** had opted to do was to refund her money.
 16. The employees of **POPEYE'S** were not properly trained to address the incident. Ms. **ALFONSO** did not accept the offer for the refund of her money and did not return the box of "chicken." She then telephoned 311 to file an incident claim where a representative explained that she would receive a call in 37 days and that she is not to throw away the chicken. She received an incident number from 311 to wit: C1-1-496730951.
 17. After some time, without hearing from anyone, Ms. Alfonso's mother calls 311 to follow up on the incident. She was directed to contact the Department of the Health where a representative stated that an investigation will be conducted.
 18. Upon discovery of the rat's tail, Ms. **ALFONSO** was endangered and susceptible to illness and disease from the extreme, negligent acts of the Defendants.

19. After this incident Ms. **ALFONSO** suffered severe traumatic injuries that substantially altered her regular diet, destroying her confidence in eating chicken and causing her to become fearful and disgusted at the sight of chicken.
20. That the Defendants, based on their advertising to the general public on a national level, and particularly to the instant community, is misleading the community as to what it is they are serving at their food service establishment.
21. That by reason of the negligence and/or recklessness of the defendants, plaintiff **ALFONSO** sustained serious injuries as defined in § 5102(d) of the Insurance Law of the State of New York and/or economic damages greater than basic economic damages as defined in § 5102(a) of the Insurance Law of the State of New York.
22. This action falls within one or more of the exceptions set forth in CPLR § 1602.
23. This action is based upon a health and sanitary code violation as well as misrepresentations committed by the defendants which in turn resulted in severe injury to the plaintiff **ALFONSO**, in Kings County.

AS AND FOR A FIRST CAUSE OF ACTION (NEGLIGENCE and/or RECKLESSNESS)

24. Plaintiff repeats and reiterates each and every allegation contained in the paragraphs marked "1" through "23."
25. That at all times hereinafter mentioned, the defendant **POPEYE'S** owned Popeye's Chicken & Biscuits at 1422 Fulton Street located in Brooklyn, State of New York, County of Kings.

26. That at all times hereinafter mentioned, the defendant **POPEYE'S** managed Popeye's Chicken & Biscuits at 1422 Fulton Street located in Brooklyn, State of New York, County of Kings.
27. That at all times hereinafter mentioned, the defendant **POPEYE'S** controlled Popeye's Chicken & Biscuits at 1422 Fulton Street located in Brooklyn, State of New York, County of Kings.
28. That at all times hereinafter mentioned, the defendant **POPEYE'S** operated Popeye's Chicken & Biscuits at 1422 Fulton Street located in Brooklyn, State of New York, County of Kings.
29. That at all times hereinafter mentioned, the defendant **POPEYE'S** maintained Popeye's Chicken & Biscuits at 1422 Fulton Street located in Brooklyn, State of New York, County of Kings.
30. That at all times hereinafter mentioned, defendant **POPEYE'S** is a food service establishment located at 1422 Fulton Street, Brooklyn, New York 11216 was and still is a food service establishment, which the defendant **POPEYE'S**, had and still holds a duty to maintain.
31. That imposed upon the defendant **POPEYE'S**, as owners by law, is the duty of maintaining, managing and providing a safe, public food service establishment so that customers within said venue are not subject to dangerous and unsafe conditions on said premises.
32. That at all times hereinafter mentioned, the defendant **ENTERPRISES** was and is a corporation duly organized and existing under and by virtue of the laws of the State of New York.

33. That at all times hereinafter mentioned, the defendant **ENTERPRISES** was a partnership duly organized and existing under and by virtue of the laws of the State of New York.
34. That at all times hereinafter mentioned, the defendant **ENTERPRISES** owned Popeye's Chicken & Biscuits at 1422 Fulton Street located in Brooklyn, State of New York, County of Kings.
35. That at all times hereinafter mentioned, the defendant **ENTERPRISES** managed Popeye's Chicken & Biscuits at 1422 Fulton Street located in Brooklyn, State of New York, County of Kings.
36. That at all times hereinafter mentioned, the defendant **ENTERPRISES** controlled Popeye's Chicken & Biscuits at 1422 Fulton Street located in Brooklyn, State of New York, County of Kings.
37. That at all times hereinafter mentioned, the defendant **ENTERPRISES** operated Popeye's Chicken & Biscuits at 1422 Fulton Street located in Brooklyn, State of New York, County of Kings.
38. That at all times hereinafter mentioned, the defendant **ENTERPRISES** maintained Popeye's Chicken & Biscuits at 1422 Fulton Street located in Brooklyn, State of New York, County of Kings.
39. That imposed upon the defendant **ENTERPRISES**, as owners by law, is the duty of maintaining, managing and providing a safe, public food service establishment so that customers within said venue are not subject to dangerous and unsafe conditions on said premises.

40. That at all times hereinafter mentioned, the defendant **NASARY** owned Popeye's Chicken & Biscuits at 1422 Fulton Street located in Brooklyn, State of New York, County of Kings.
41. That at all times hereinafter mentioned, the defendant **NASARY** managed Popeye's Chicken & Biscuits at 1422 Fulton Street located in Brooklyn, State of New York, County of Kings.
42. That at all times hereinafter mentioned, the defendant **NASARY** controlled Popeye's Chicken & Biscuits at 1422 Fulton Street located in Brooklyn, State of New York, County of Kings.
43. That at all times hereinafter mentioned, the defendant **NASARY** operated Popeye's Chicken & Biscuits at 1422 Fulton Street located in Brooklyn, State of New York, County of Kings.
44. That at all times hereinafter mentioned, the defendant **NASARY** maintained Popeye's Chicken & Biscuits at 1422 Fulton Street located in Brooklyn, State of New York, County of Kings.
45. That imposed upon the defendant **NASARY**, as owner(s) by law, is the duty of maintaining, managing and providing a safe, public food service establishment so that customers within said venue are not subject to dangerous and unsafe conditions on said premises.
46. That on or about the 31st day of July 2009, the defendants **POPEYE'S, ENTERPRISES** and **NASARY**, its agents, servants, and/or employees negligently and carelessly, permitted, created, and/or caused the restaurant to become and remain in an unsafe condition.

47. That on or about the 31st day of July 2009, the restaurant existed as an unsafe and dangerous place for its customers, which includes the Plaintiff.
48. That on or about the 31st day of July 2009, the defendants **POPEYE'S, ENTERPRISES** and **NASARY**, its agents, servants and employees disregarded their duty and negligently and carelessly, permitted the restaurant to exist in an unsafe and dangerous matter.
49. That on or about the 31st day of July 2009, plaintiff **ALFONSO** entered defendants **POPEYE'S, ENTERPRISE** and **NASARY's** establishment and was exposed to the careless and negligent actions and behaviors of their employees.
50. That plaintiff **ALFONSO** was caused to have been subjected to the horror and nervous shock of biting into a piece of chicken where a rat tail was discovered. That this occurrence resulted in plaintiff **ALFONSO** suffering severe, traumatic and critical injuries and as such, plaintiff **ALFONSO**, would not permit herself to eat chicken for a lengthy period of time.
51. That defendants **POPEYE'S, ENTERPRISES** and **NASARY**, its employees, servants, agents were the sole cause of said incident by their negligent action in not maintaining adequate sanitary equipment, following health rules and regulations and/or appropriate safety precautions and disregarding their duties.
52. That as a result of the foregoing, plaintiff **ALFONSO**, suffered serious injuries, pain and suffering, emotional distress, disabilities, a diminished quality of life and was compelled to seek medical care and attention.
53. That the accident and resulting injuries sustained by the plaintiff was caused solely by the negligence of the defendants, its employees, servants, its agents, without any negligence on behalf of the plaintiff contributing thereto.

54. That the plaintiff **ALFONSO** suffered, upon information and belief, severe pain and nervous shock.

55. That the plaintiff **ALFONSO** sustained severe and permanent injuries and that defendant, its employees, servants, agents, caused plaintiff to sustain these injuries.

AS AND FOR A SECOND CAUSE OF ACTION (VICARIOUS LIABILITY and/or RESPONDEAT SUPERIOR)

56. Plaintiff repeats and reiterates each and every allegation contained in the paragraphs marked and designated "1" through "55", inclusive of the Complaint with the same force and effect as though it were set forth at length and alleged in full.

57. That on or about the 31st day of July 2009, the defendants, their employees, servants, agents failed to follow proper restaurant standards and procedures pursuant, but not limited, to the New York City Health Code, Rules of the City of New York, and New York State Sanitary Code at the time of this cause of action and at all times in between and subsequent thereto.

58. That on or about the 31st day of July 2009, the defendants, their employees, servants, agents, failed to properly treat, care for and report the occurrence herein stated.

59. That on or about the 31st day of July 2009, the defendants, their employees, servants, agents, failed to timely report the occurrence of such incident and failed to provide Plaintiff with proper medical attention and that such delay caused the Plaintiff not to be seen in a expeditious matter.

60. That the defendants, their employees, servants, agents, were negligent for failing to use proper care and attention in the safe operation of the facilities equipment with the preparation of food to be served to the public.

61. That at all times hereinafter mentioned, the defendants **POPEYE'S, ENTERPRISE** and **NASARY** were the cause of said incident due to the negligence, carelessness, disregard of duties and responsibilities; and recklessness of the defendants, their agents, servants and/or employees and the plaintiff was injured thereby; failure to use all its means and efforts to avoid the happening of this event; permitting, causing and allowing all of the foregoing to be, become and remain; failing to take suitable precautions to prevent the happening of the aforesaid occurrence; failure to remedy the aforesaid danger.

62. By reason of the foregoing, plaintiff **ALFONSO** demands judgment as follows: as against all defendants, its employees, servants, agents, Plaintiff demands judgment in the sum of **ONE HUNDRED FIFTY THOUSAND (\$150,000.00) DOLLARS**

WHEREFORE, the Plaintiff, **MICHELLEE ALFONSO**, claims damages sought by the Plaintiff exceeds the jurisdictional amounts of the lower courts in the cause of action which would otherwise have jurisdiction, with the costs, interest and disbursements of this action and any and all other sums this honorable Court deems fit as reasonable and just compensation.

Dated: Hollis, New York
January 15, 2010

Yours etc.



RENÉ MYATT, ESQ.
Attorney for Plaintiff
MICHELLEE ALFONSO
204-04 Hillside Avenue, 2nd Floor
Hollis, New York 11423
(718) 468-3588