

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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LYNN WOJTON,	:	
	:	
Plaintiff,	:	Index No. _____
	:	
-against-	:	
	:	SUMMONS
MARCIA CHASE-MARSHALL,	:	
	:	<u>Basis of Venue</u>
Defendant.	:	Venue is proper in New York County
	:	pursuant to CPLR §§ 503(a) and (c)
-----x		

TO THE ABOVE-NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer on the undersigned attorneys for plaintiff Lynn Wojton within twenty (20) days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York
March 7, 2019

McLAUGHLIN & STERN, LLP

By: 
 Brett R. Gallaway
 260 Madison Avenue
 New York, New York 10016
 Tel.: (212) 448-1100
bgallaway@mclaughlinstern.com
 Attorneys for Plaintiff Lynn Wojton

TO: Marcia Chase-Marshall
722 Fisher Street
Pittsburg, PA 15210

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X	:	
LYNN WOJTON,	:	
	:	
Plaintiff,	:	Index No. _____
	:	
-against-	:	
	:	
MARCIA CHASE-MARSHALL,	:	<u>COMPLAINT</u>
	:	
Defendant.	:	
	:	
-----X	:	

Plaintiff Lynn Wojton, by and through her attorneys, McLaughlin & Stern, LLP, for her Complaint against Marcia Chase-Marshall, allege as follows:

PARTIES

1. Lynn Wojton is an individual domiciled and residing in New York, New York.
2. Upon information and belief, Marcia Chase-Marshall is an individual domiciled and residing in Pittsburgh, Pennsylvania.

JURISDICTION & VENUE

3. This Court has jurisdiction over Defendant pursuant to CPLR §§ 301 and 302.
4. Venue properly lies in New York County pursuant to CPLR § 503(a) and (c) as Ms. Wojton resides in New York, New York.

FACTUAL BACKGROUND

5. In the summer of 2018, Plaintiff, who was pregnant with her first child, began searching for a postpartum doula, also referred to as baby nurse. The purpose of a baby nurse is to help a parent(s) in those first days and weeks after bringing home a newborn by assisting with infant feeding, emotional and physical recovery from birth, mother-baby bonding, infant soothing, and basic newborn care.

6. One or about July 2018, friends of Plaintiff, who had previously utilized Defendant's services in New York, recommended Defendant and arranged for an introduction between Plaintiff and Defendant.

7. Thereafter, Defendant sent a one-page contract to Plaintiff in New York for Defendant's baby nursing services. The contract provided that Defendant would provide baby nursing services in New York for a period of six (6) weeks (the "Baby Nursing Services Contract"). The Baby Nursing Services Contract provided that Plaintiff would arrange and pay for Defendant's travel between Defendant's home and Plaintiff's New York residence.

8. On or about July 13, 2018, Plaintiff executed the Baby Nursing Services Contract for Defendant's services, a true and correct copy of which is annexed hereto as Exhibit A.

9. The Baby Nursing Services Contract did not contain a termination provision.

10. After the parties executed the Baby Nursing Services Contract, Defendant sent a second contract to Plaintiff in New York for Defendant's baby nursing services. The second baby nursing services contract more than doubled the deposit that Plaintiff was required to remit to Defendant. Instead of remitting a deposit equal to one-week of pay as contemplated by the Baby Nursing Services Contract, the second baby nursing services contract increased the amount Plaintiff had to pay Defendant per day for Defendant's services and required a deposit equal to two-weeks of pay. The second baby nursing services contract also added numerous conditions for Defendant to render services.

11. On August 8, 2018, Plaintiff, then only one month shy of giving birth, was presented with the second contract by Defendant under the auspices that Defendant needed an original wet signature on the Baby Nursing Services Contract. Plaintiff signed the second contract believing that it was the original Baby Nursing Services Contract. A true and correct copy of the second contract is annexed hereto as Exhibit B.

12. Sometime thereafter, Plaintiff paid Defendant a deposit of \$4,200.

13. Plaintiff gave birth to her baby on or about September 9, 2018, and notified Defendant.

14. On or about September 11, 2018, Defendant arrived at Plaintiff's New York residence ostensibly to provide care and support to Plaintiff and her newborn baby; however, in reality, that was not the case.

15. Notably, in multiple conversations with Defendant, Plaintiff made it clear that she wanted to rely on breastfeeding as her newborn's sole source of nutrition because it was her belief it was best for the health of the baby and fostered bonding with her newborn. Defendant strenuously resisted Plaintiff's wishes and expressed a strong desire to formula-feed the baby.

16. Defendant initially claimed that she was recommending formula feeding the baby because she was concerned for the baby's health. In subsequent conversations, Defendant explained that her true concern with Plaintiff solely breastfeeding her newborn was Defendant's own sleep schedule, although she thinly disguised her objections as concern for Plaintiff. Defendant claimed that formula-fed babies need fewer feedings per day and through the night because formula takes longer for a baby's system to digest than breastmilk. Defendant objected to having to wake up multiple times during the night to bring the baby to Plaintiff because of the more frequent feedings of breastfed babies.

17. Despite Defendant's objections, Plaintiff reiterated that the baby should be brought to her to be breastfeed for feedings and feedings should not be supplemented with formula.

18. Upon information and belief, Defendant discovered formula that was included in the hospital's take-home care package provided at discharge. Contrary to Plaintiff's explicit instructions, Defendant began to formula-feed Plaintiff's newborn without Plaintiff's knowledge

or consent. Plaintiff was shocked and upset to discover that Defendant had given her newborn formula during the night – rather than bringing the baby to Plaintiff to nurse.

19. On September 15, 2018, Plaintiff informed Defendant by text that she wanted to care for her newborn for a few days on her own and that Defendant could have a paid vacation. She told Defendant that she had arranged for a flight for Defendant's travel home during this respite. A true and correct copy of the text is annexed hereto as Exhibit C.

20. Shortly thereafter, Defendant met with Plaintiff and told Plaintiff that she did not need a flight. Defendant said that before Plaintiff had sent the text, Defendant had already informed her husband that she had decided to quit Plaintiff's employ and her husband was already on his way to pick up Defendant. As a result, Plaintiff cancelled the flight she had booked. Defendant left with her husband on September 15, 2018, and did not return to Plaintiff's residence.

21. As a result of Defendant's departure, Plaintiff had to quickly search for a baby nurse with a four-day old newborn already at home. Plaintiff subsequently retained another baby nurse to assist with the care of her newborn for a week, who charged Plaintiff \$200 per day more than Defendant's rate.

AS AND FOR A FIRST CAUSE OF ACTION
(Breach of the Implied Covenant of Good Faith and Fair Dealing)

22. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs as if repeated at length herein.

23. Plaintiff repeatedly instructed Defendant to bring the baby to Plaintiff whenever the baby needed to be fed and she explicitly stated that the baby should not be formula-fed.

24. Defendant knew that Plaintiff solely wanted to rely on breastfeeding for her baby's source of nutrition and, nonetheless, without Plaintiff's knowledge or consent, Defendant fed Plaintiff's baby formula.

25. Defendant's actions as described herein constitute a breach of her obligations of good faith and fair dealing.

26. As a result of Defendant's breach, Plaintiff has been injured and seeks recovery of damages against Defendant in an amount to be determined at trial, but not less than \$10,000.

AS AND FOR A SECOND CAUSE OF ACTION
(Anticipatory Breach of Contract)

27. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs as if repeated at length herein.

28. Defendant's actions as described herein constitutes an anticipatory breach of the Baby Nursing Services Contract.

29. As a result of the anticipatory breach of the Baby Nursing Services Contract, Plaintiff has been injured and seeks recovery of damages against Defendant in an amount to be determined at trial, but in no event less than \$10,000.

WHEREFORE, Plaintiff requests judgment be entered in her favor and against Defendant as follows:

(a) On Plaintiff's First Cause of Action, damages in an amount to be determined at trial, but in no event less than \$10,000;

(b) On Plaintiff's Second Cause of Action, damages in an amount to be determined at trial, but in no event less than \$10,000;

(c) On both causes of action, the costs and disbursements incurred in connection with this action, including reasonable attorney's fees.

(d) Such other and further relief as this Court may deem just and proper.

Dated: New York, New York
March 7, 2019

McLAUGHLIN & STERN, LLP

By: 

Brett R. Gallaway

260 Madison Avenue
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Attorneys for Plaintiff Lynn Wojton