

STATE OF NEW YORK
SUPREME COURT COUNTY OF ONONDAGA

KENNETH L. YERDON and JULIE A. ALUZZO-YERDON, 3616 Redhead Terrace, Liverpool, New York 13090,

Plaintiffs designate Onondaga County as the place for trial.

Plaintiffs,

The basis of venue is Plaintiffs' residence

v.

GREGORY R. LAMICA, 100 Central Drive, Central Square, New York 13036; BRINKER SERVICES CORPORATION, 6820 LBJ Freeway, Dallas, Texas 75240; BRINKER RESTAURANT CORPORATION, 6820 LBJ Freeway, Dallas, Texas 75240; PEPPER DINING, INC. 11600 N Community House 200, Charlotte, North Carolina 28277 d/b/a CHILI'S, 3954 Route 31, Liverpool, New York 13090,

SUMMONS

Index No. _____

Defendants.

*Plaintiffs reside at:
3616 Redhead Terrace
Liverpool, NY 13090*

To the above named Defendants:

YOU ARE HEREBY SUMMONED, to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this Summons, to serve a notice of appearance, on the Plaintiff's attorney within twenty (20) days after the service of this Summons, exclusive of the day of service (or within thirty (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: May 29, 2015

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Defendants' Addresses:

Gregory R. Lamica
100 Central Drive
Central Square, NY 13036

Brinker Services Corporation
6820 LBJ Freeway
Dallas, TX 75240

Brinker Restaurant Corporation
6820 LBJ Freeway
Dallas, TX 75240

Pepper Dining, Inc. d/b/a Chili's
11600 N Community House Rd 200
Charlotte, NC 28277

STATE OF NEW YORK
SUPREME COURT COUNTY OF ONONDAGA

KENNETH L. YERDON and JULIE A. ALUZZO-
YERDON,

Plaintiffs,

v.

GREGORY R. LAMICA, BRINKER SERVICES
CORPORATION, BRINKER RESTAURANT
CORPORATION, PEPPER DINING, INC. d/b/a
CHILI'S,

Defendants.

COMPLAINT

Index No. _____

Plaintiffs Kenneth L. Yerdon and Julie A. Aluzzo-Yerdon, by their attorneys,
Robert E. Lahm, PLLC complaining of the Defendants herein state as follows:

1. At all times hereinafter mentioned, Plaintiffs Kenneth L. Yerdon and
Julie A. Aluzzo-Yerdon were and are residents of the County of Onondaga in the State
of New York, residing at 3616 Redhead Terrace, Liverpool, New York 13090.

2. Upon information and belief, and at all times relevant, Defendant
Gregory R. Lamica (hereinafter "Lamica") resides at 100 Central Drive, Central Square,
New York 13036.

3. Upon information and belief, Defendant Brinker Services Corporation, is
a Florida corporation, authorized to conduct business in New York State, whose address
is 6820 LBJ Freeway, Dallas, Texas 75240.

4. Upon information and belief, Defendant Brinker Restaurant Corporation, is a Delaware corporation, authorized to conduct business in New York State, whose address is 6820 LBJ Freeway, Dallas, Texas, 75240.

5. Upon information and belief, Defendants Brinker Services Corporation and Defendant Brinker Restaurant Corporation (hereinafter "Brinker") owned, operated, or is the franchisor of Chili's restaurant located at 3954 State Route 31, Liverpool, New York 13090.

6. Upon information and belief, Defendant Pepper Dining Inc. d/b/a Chili's (hereinafter "Pepper Dining"), is a Delaware corporation, authorized to conduct business in New York State, whose address is 11600 N Community House Road 200, Charlotte, North Carolina 28277.

7. Upon information and belief, Defendant Pepper Dining owned, operated, or is the franchisee of Chili's restaurant located at 3954 State Route 31, Liverpool, New York 13090.

8. Upon information and belief, and at all times relevant, Defendants Brinker and Defendant Pepper Dining d/b/a Chili's are liable for the negligence of Defendant Lamica under the doctrine of *respondeat superior* as Defendant Lamica was an employee, agent, servant, officer, partner, owner, or shareholder of Defendant Brinker and/or Defendant Pepper Dining.

9. Based on one or more of the exceptions set forth in CPLR §1602, the limitations on joint and several liability are not applicable to this action.

**AS AND FOR A FIRST CAUSE OF ACTION AGAINST ALL
DEFENDANTS BASED ON NEGLIGENCE**

Plaintiffs repeat, reiterate and reallege each and every allegation set forth in the paragraphs of this Complaint numbered "1" through "9" inclusive and with the same force and effect as if set forth herein.

10. On July 28, 2014 Plaintiffs and their 12 year old son went to Chili's restaurant located at 3954 State Route 31, Liverpool, New York 13090.

11. On July 28, 2014, Defendant Brinker owed a duty to use reasonable care in the employment, training, supervision and retention of its employees, to hire competent people, and to insure the employees they hire are competent to do their work without causing danger of harm to others.

12. After finishing his meal, Plaintiff Kenneth Yerdon requested Defendant Lamica provide a drink in a "to go cup". Defendant Lamica surreptitiously and intentionally spit his bodily fluid into his cup intending to harm Plaintiff Kenneth Yerdon.

13. The cup was covered and Plaintiff did not know of this act and accordingly, partially consumed the drink.

14. Defendants' negligence or any of them consisted in part of the following: failing to exercise reasonable care; failing to properly train and supervise its employees; failing to find out if its employees were competent and properly performing their work without causing harm to their customers/guests and failing to maintain discipline of their staff.

15. After the event on July 28, 2014 the Defendants did nothing to discipline their employee Defendant Lamica and, in fact, retained him as an employee until he left of his own volition in October 2014, notwithstanding that Defendant Lamica admitted to a manager of his employer and to a New York State Police Investigator that he spit in Plaintiff Kenneth Yerdon's drink and DNA testing of the spittle confirmed that it was Defendant Lamica.

16. As a result of the negligence of Defendants, Plaintiff Kenneth Yerdon suffered injuries including, but not limited to fear and anxiety that he may have been infected with an infectious disease such as hepatitis or HIV/AIDS.

17. As Plaintiff Kenneth Yerdon did not know the health history of Defendant Lamica he took reasonable precautions to guard his health and that of his family which included testing for hepatitis and HIV and had vaccinations and injections as a prophylactic for those infectious diseases.

18. Plaintiff Kenneth Yerdon's injuries were entirely foreseeable under the circumstances then and there present.

19. Defendants' negligence was a legal cause, a cause-in-fact, a proximate cause or a substantial factor because of the spit in his cup resulting in bodily and psychological injury to he and his wife.

20. Plaintiff Kenneth Yerdon's injuries were caused by an intentional act of Defendant Lamica, the negligence of the other Defendants and without any fault on the part of the Plaintiffs whatsoever.

21. Due to the foregoing, Plaintiff Kenneth Yerdon has been damaged.

**AS AND FOR A SECOND CAUSE OF ACTION AGAINST ALL
DEFENDANTS BASED ON OUTRAGEOUS CONDUCT
CAUSING EMOTIONAL DISTRESS**

Plaintiffs repeat, reiterate and reallege each and every allegation set forth in the paragraphs of this Complaint numbered "1" through "21" inclusive and with the same force and effect as if set fully forth herein.

22. Upon information and belief, Defendant Lamica intentionally spit into Plaintiff Kenneth Yerdon's cup which caused economic injury and emotional distress and anxiety to Plaintiff Kenneth Yerdon and his family.

23. Defendant Lamica's conduct and his employer's negligent irresponsible retention of an incompetent, immoral, wanton, reckless and malicious employee, Defendant Lamica, was so shocking and outrageous that it exceeds all reasonable bounds of decency.

24. Plaintiff Kenneth Yerdon's injuries were substantially certain under the circumstances then and there present, without any fault on the Plaintiffs whatsoever.

By reason of the foregoing, Plaintiffs have been damaged.

**AS AND FOR A THIRD CAUSE OF ACTION AGAINST ALL DEFENDANTS
SEEKING PUNITIVE DAMAGES**

Plaintiffs repeat and reallege the allegations set forth in paragraphs "1" through "24" as if fully set forth herein.

25. Defendant Lamica's physical act of aggression of spitting into the drink cup is conduct that represents a high degree of immorality. His conduct was wanton, reckless, malicious, outrageous and intentional.

26. The Defendants' conduct, or any of them, demonstrates conscious indifference and utter disregard of its effect upon the health, safety and rights of others.

27. Defendant's act of spitting in the drink cup of Plaintiff shows vindictiveness or an improper motive and constitutes outrageous and oppressive and intentional conduct.

28. The Defendants were aware that the conduct would cause harm, was likely to cause harm, concealed and covered up their wrongdoing including the harm to Plaintiff, or to other persons other than Plaintiffs in the future.

29. Defendants Brinker and Pepper Dining did not terminate Defendant Lamica after being aware of his spitting into Plaintiff's drink. Defendants Brinker and Pepper Dining knew of the actual and potential harm caused by Defendant Lamica's conduct.

30. Defendants Brinker and Pepper Dining failed to terminate Defendant Lamica after being aware of his intentionally spitting in the drink cup of a guest, particularly when Defendant Lamica admitted to his manager and to the Investigator of New York State Troopers that he, in fact, spit into Plaintiff's drink cup and concealed the spitting by putting a lid over the "to go cup".

31. Defendant Lamica nevertheless continued his employment until October of 2014 when, upon information and belief, Defendant Lamica left of his own will and volition.

32. Defendants had actual and constructive notice of this kind of act and knowledge by prior employee threats and actions for which they took disciplinary actions.

By reason of the foregoing, Plaintiffs have been damaged.

**AS AND FOR A FOURTH CAUSE OF ACTION AGAINST ALL DEFENDANTS
ON BEHALF OF PLAINTIFF JULIE A. ALUZZO-YERDON**

Plaintiffs repeat and reallege the allegations set forth in paragraphs "1" through "32" as if fully set forth herein.

33. Plaintiff Julie A. Aluzzo-Yerdon is the wife of Plaintiff Kenneth Yerdon, having been married on December 9, 2000, and is the person with whom he resides.

34. By reason of the Defendants' negligence and carelessness and the intentional tort of Defendant Lamica, Plaintiff Julie A. Aluzzo-Yerdon has suffered the loss of her husband's consortium which caused her great mental distress.

35. Plaintiff Kenneth Yerdon had to be tested for Hepatitis A, B, and C and for HIV on July 29, 2014 and again on January 13, 2015 as he did not know the health history of Defendant Lamica. He took reasonable precautions to guard his health and that of his family which included testing for hepatitis and HIV and had vaccinations and injections as a prophylactic for those infectious diseases. Plaintiff Julie A. Aluzzo-

Yerdon suffered from severe anxiety and stress as the medical history of Defendant Lamica was unknown and the possibility that her husband may have been subjected to an infectious disease such as hepatitis or AIDS. She sought counseling and was prescribed antianxiety medication to help control the anxiety of the issue.

By reason of the foregoing, Plaintiffs have been damaged.

WHEREFORE, pursuant to CPLR 3017(c) plaintiffs demand judgment against the Defendants in the First, Second, Third, and Fourth Causes of Action, together with the costs and disbursements of this action; damages in this action exceed the jurisdictional amounts of all lower courts which would otherwise have jurisdiction.

PLEASE TAKE NOTICE that the undersigned, an attorney admitted to practice in the Courts of the State of New York is an attorney for the Plaintiffs in the within action and has read the foregoing, knows the contents thereof and that on information and belief, believes it to be true.

Dated: May 29, 2015



Robert E. Lahm, Esq.
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