At an IAS Term, Part 19 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 3 day of July, 2025.

P R E S E N T:

HON. HEELA D. CAPELL,
Justice.

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Vinudh Naulla,

Plaintiff,

- against -

WrkArt Studios, LLC and Mark Hikind, *in his individual and official capacities*,

Defendants.

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Index No.: 518241/2024

Motion Sequence # 1-2

Decision and Order

The following e-filed papers read herein:	Doc Nos.:
Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits	4-11, 13-21
Opposing Affidavits (Affirmations)	22-23
Affidavits/ Affirmations in Reply	26-27
Other	12

Upon the foregoing papers, Defendants' WrkArt Studios, LLC and Mark Hikind (collectively, "Defendants") motion to dismiss the complaint (Motion Sequence No. 1) and motion to dismiss the amended complaint (Motion Sequence No. 2) are decided as follows:

In his amended complaint, Plaintiff Vinudh Naulla ("Plaintiff") alleges, *inter alia*, that he capably worked as the Property Manager/Facilities Director for Defendants from 2021 to October 2023, when he was terminated from his position. He alleges that on September 5, 2023, he provided written notice of his intent to take paid family leave to care for his newborn, and on

October 16, 2023, he submitted formal paperwork for paid leave. He contends that after submitting the paperwork, Mark Hikind ("Hikind") demanded that he continue working during his leave. Plaintiff maintains that later that day, Hikind informed him that he had hired a replacement for Plaintiff and that his employment was terminated. Plaintiff claims that his termination, five weeks after the leave notice and on the same day the paperwork was filed, creates an inference of discrimination and retaliation. Additionally, Plaintiff claims that Defendants withheld approximately $30,000.00 in commissions he earned, unlawfully deducted portions of those commissions, and failed to pay his final wages on the regular payday.

Defendants move to dismiss the complaint under CPLR 3211(a)(1) and (a)(7). Pursuant to CPLR 3211(a)(1), a party may move to dismiss a claim by asserting a defense founded upon documentary evidence. As Defendants have not submitted any documentary evidence for consideration, dismissal under CPLR 3211(a)(1) is not warranted. Defendants also move to dismiss the complaint pursuant to CPLR 3211(a)(7). On a motion under CPLR 3211(a)(7) for failure to state a cause of action, the facts alleged in the complaint are taken as true, and all inferences must be drawn in favor of the plaintiff (*see Mitchell v TAM Equities, Inc.*, 27 AD3d 703, 704 [2d Dept 2006]).

For his first and fourth causes of action, Plaintiff pleads that Defendant discriminated against him in violation of the New York State Human Rights Law ("NYSHRL") and New York City Human Rights Law ("NYCHRL"), respectively. A plaintiff alleging discrimination in violation of the NYSHRL must establish that (1) he or she is a member of a protected class; (2) he or she was qualified to hold the position; (3) he or she suffered an adverse employment action; and (4) the adverse action occurred under circumstances giving rise to an inference of discrimination (*see Bilitch v NY City Health & Hosps. Corp.*, 194 AD3d 999, 1001 [2d Dept 2021]; *see also Rogoff v Long Is. Univ.*, 208 AD3d 700 [2d Dept 2022]). Alternatively, a plaintiff

alleging discrimination in violation of the NYCHRL must allege that they were "treated less well" than their colleagues (*Bilitch*, 194 AD3d at 1003).

From the four corners of the pleadings, Plaintiff sufficiently alleges that he has protected caregiver/gender status, had satisfactory job performance, was terminated five weeks after announcing paid-family leave plans, and that he was required to work during his leave. These facts give reasonable support to an inference of discrimination as required for a cause of action for discrimination under the NYSHRL at the pleading stage (*see id.* at 1001). Similarly, Plaintiff's cause of action for discrimination under the NYCHRL also survives a CPLR 3211(a)(7) motion as Plaintiff sufficiently pleaded that he was treated less well than other employees. Namely, that he was forced to work during his paternity leave as a male as opposed to female employees who would not have been treated the same. Importantly, Plaintiff alleges Defendant told him directly that **he would have to work remotely during paternity leave because he was male** (emphasis added).

Defendants argue that Plaintiff failed to sufficiently establish a causal connection between his alleged protected activity and the alleged retaliatory conduct. However, Plaintiff sufficiently alleges that he was engaged in a protected activity as a caregiver who requested paternity leave, that Defendants were aware of this conduct, and that he was subsequently terminated as a result. These allegations adequately establish a causal nexus between the protected activity and the adverse action. Accordingly, Plaintiff has stated a cause of action for retaliation under both the NYSHRL and NYCHRL (*see id.*).

For his third and seventh causes of action, Plaintiff pleads aider and abettor liability against Hikind under New York State Executive Law § 296(6) and NYCHRL § 8-107(6), which both make it unlawful for "any person to aid, abet, incite, compel or coerce" the commission of any discriminatory acts (Executive Law § 296(6); New York City, N.Y., Code § 8-107[6]).

Defendants argue that Hikind cannot be liable for aiding and abetting his own conduct. However, the Second Department has held that an individual may be liable under § 296(6) when the employer itself is subject to suit, because "it is the employer's participation in the discriminatory practice which serves as the predicate for the imposition of liability on others for aiding and abetting" (*Murphy v ERA United Realty*, 251 AD2d 469, 472 [2d Dept 1998]; *see also Mitchell v TAM Equities, Inc.*, 27 AD3d 703 [2d Dept 2006]; *Russell v New York Univ.*, 42 NY3d 377 [2024]).

Although *Murphy* differs insofar as that claim pertains to co-employee liability for aiding and abetting an owner-employer, its holding remains applicable here. Plaintiff alleges that Defendant WrkArt participated in the discriminatory conduct by terminating him based on his protected status, and that Hikind personally carried out the termination in his capacity as owner and operator. As Defendants are each separate entities that both allegedly participated in and may be held liable for the discriminatory conduct, Hikind may be held individually liable for aiding and abetting Defendant WrkArt's conduct pursuant to § 296(6) (*see Murphy*, 251 AD2d at 472). Since the NYCHRL offers broader protection than the NYSHRL, it likewise follows that Hikind may also be liable under NYCHRL § 8-107(6) (*see McRedmond v Sutton Place Rest. and Bar, Inc.*, 95 AD3d 671, 672 [1st Dept 2012], *abrogated by Doe v Bloomberg, L.P.*, 36 NY3d 450 [2021]).

For his sixth cause of action, Plaintiff pleads vicarious employer liability against Hikind under the NYCHRL. Plaintiff did not oppose this branch of the motion, and accordingly, Plaintiff's claim for vicarious liability is dismissed.

For his eighth and ninth causes of action, Plaintiff pleads failure to pay wages under New York Labor Law ("NYLL") §§ 191 and 193(1)(b), respectively. Plaintiff's payment frequency

claim under NYLL § 191(1)(a) fails as a matter of law as there is no private right of action for violations of NYLL § 191 (*see Grant v Glob. Aircraft Dispatch, Inc.*, 223 AD3d 712, 714-15 [2d Dept 2024]; *see also People v Jordan*, 2024 N.Y. Misc. LEXIS 47014 [Sup Ct, Kings County Dec. 17, 2024, No. 530659/2022]). Further, Plaintiff has failed to adequately allege that he qualifies as a "manual worker" within the meaning of NYLL § 190(4). Accordingly, Plaintiff's eighth cause of action for failure to timely pay wages under NYLL § 191(1)[a] is dismissed.

With respect to the claim for payroll deductions under § 193(1)(b), Plaintiff offers only conclusory statements and does not allege any specific deductions taken from his wages. Thus, Plaintiff's claim for alleged payroll deductions is dismissed for failure to plead the deductions with the requisite specificity (*see Schmidt-Sarosi v Offices for Fertility and Reproductive Medicine, P.C.*, 195 AD3d 479 [1st Dept 2021]; *see also Okeke v Interfaith Med. Ctr.*, 224 AD3d 763, 764 [2d Dept 2024]).

Accordingly, it is

ORDERED that Defendants' motion to dismiss the original complaint is denied as moot in light of Plaintiff's amended complaint; and it is further

ORDERED that Defendants' motion to dismiss the amended complaint is granted to the extent that Plaintiff's sixth, eighth, and ninth causes of action are dismissed. The remainder of the motion is denied.

This constitutes the decision and order of the court.

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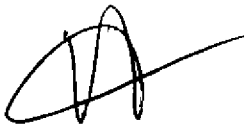

Hon. Heela D. Capell, J.S.C