

**Hickman v City of New York**

2025 NY Slip Op 32807(U)

July 30, 2025

Supreme Court, New York County

Docket Number: Index No. 158494/2024

Judge: Hasa A. Kingo

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This opinion is uncorrected and not selected for official publication.

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

**PRESENT: HON. HASA A. KINGO PART 05M**

*Justice*

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**INDEX NO. 158494/2024**

KISHON HICKMAN,

**MOTION DATE N/A**

Plaintiff,

**MOTION SEQ. NO. 002**

- v -

CITY OF NEW YORK, ANTONIO PAGAN

**DECISION + ORDER ON  
MOTION**

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 002) 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25

were read on this motion for DISMISSAL.

In this action, Defendant the City of New York (“City”) moves, pursuant to CPLR §§ 3211(a)(1), (a)(5), and (a)(7), to dismiss Plaintiff Kishon Hickman’s (“Plaintiff”) complaint in its entirety. Plaintiff cross-moves for leave to amend his complaint. For the reasons discussed below, the City’s motion to dismiss is granted in full, and Plaintiff’s cross-motion to amend is denied.

**BACKGROUND**

Plaintiff, a former NYPD lieutenant, commenced this action against the City and a former NYPD official, Antonio Pagan, alleging claims of discrimination, hostile work environment, retaliation, and strict liability under the New York City Human Rights Law (“CHRL”), as well as race discrimination and failure to promote. Plaintiff contends that he suffered adverse employment consequences and personal harm stemming from his romantic relationship with Huda Ahmad, who had filed a sexual harassment complaint against Defendant Pagan.

On November 23, 2022, Plaintiff executed a “Negotiated Settlement” with the NYPD, pursuant to which he pled guilty to seven disciplinary specifications involving serious misconduct, including fraudulent timekeeping, unauthorized off-duty employment, and misuse of City resources. In exchange, Plaintiff received a stipulated penalty and agreed to a broad general release discharging the City and the NYPD from all claims from the start of his employment through the date of the release.

Plaintiff retired from the NYPD on January 11, 2023. He commenced this action on or about January 2, 2025. The City now moves to dismiss based on the general release, the statute of limitations, and failure to state legally cognizable claims. Plaintiff opposes and seeks leave to amend.

## ARGUMENTS

The City argues that Plaintiff's claims are barred by the general release he executed as part of the negotiated disciplinary settlement, which unambiguously discharges the City from "all actions, causes of action... from the beginning of [his] date of appointment... to the date of this release." The City also contends that many of Plaintiff's claims are time-barred under the CHRL's three-year statute of limitations, and that the CHRL does not provide for associational discrimination based on sex or gender. Additionally, the City maintains that Plaintiff fails to adequately plead retaliation or strict liability under the CHRL.

Plaintiff argues that the general release is unenforceable because it was part of a "contract of adhesion" signed under duress to avoid losing his pension. He also contends that many of the events giving rise to his claims occurred after the release was signed, making the release moot. Plaintiff seeks leave to amend the complaint to plead further facts supporting associational discrimination, retaliation, and race-based discrimination.

## DISCUSSION

The court turns to the substantive merits of the City of New York's motion to dismiss and the Plaintiff's cross-motion to amend the complaint. This matter demands careful and rigorous analysis not only because of the factual complexity but because it involves a purported waiver of civil rights claims through a negotiated disciplinary agreement executed within a law enforcement context. The legal issues raised implicate the enforceability of general releases, the scope of the CHRL, and the boundary between facial plausibility and speculative pleading. Upon close review of the entire record—including the complaint, the proffered amended complaint, the parties' submissions, and applicable precedent—this court finds that Plaintiff's claims must be dismissed and that leave to amend is unwarranted.

"On a motion to dismiss a cause of action pursuant to CPLR § 3211(a)(5) on the ground that it is barred by the statute of limitations, a defendant bears the initial burden of establishing, *prima facie*, that the time in which to sue has expired" (*Benn v Benn*, 82 AD3d 548, 548 [1st Dept 2011][quoting *Island ADC, Inc. v Baldassano Architectural Group, P.C.*, 49 AD3d 815, 816 [2d Dept 2008]]; *see also Gravel v Cicola*, 297 AD2d 620 [2d Dept 2002]). "The burden then shifts to the plaintiff to raise a question of fact as to whether the statute of limitations has been tolled or was otherwise inapplicable, or whether the action was actually commenced within the period propounded by the defendant" (*QK Healthcare, Inc. v InSource, Inc.*, 108 AD3d 56, 65 [2d Dept 2013]; *see MTGLQ Investor, LP v Wozencraft*, 172 AD3d 644 [1st Dept 2019]; *Epiphany Community Nursery School v Levey*, 171 AD3d 1 [1st Dept 2019]; *J.A. Lee Elec., Inc. v City of New York*, 119 AD3d 652 [2d Dept 2014]). A plaintiff's submissions in response to the motion "must be given their most favorable intendment" (*Benn*, 82 AD3d at 548, *supra* quoting *Arrington v New York Times Co.*, 55 NY2d 433, 442 [1982]).

On a motion to dismiss for failure to state a cause of action under CPLR § 3211 (a)(7), courts afford the pleadings a liberal construction, accept the facts as alleged in the complaint as true, and give the plaintiff the benefit of every possible favorable inference (*Leon v Martinez*, 84 NY2d 83, 87 [1994]; *JF Capital Advisors, LLC v Lightstone Group, LLC*, 25 NY3d 759, 764

[2015].) Ordinarily, the court's inquiry is limited to assessing the legal sufficiency of the plaintiff's pleadings; accordingly, the court's only function is to determine whether the facts as alleged fit within a cognizable legal theory (*JF Capital Advisors*, 25 NY3d at 764, *supra*). However, where the complaint consists of bare legal conclusions with no factual specificity (*Godfrey v Spano*, 13 NY3d 358, 373 [2009]) or where the statements in a pleading are not sufficiently particular to give the court and parties notice of the transactions and/or occurrences intended to be proven (CPLR §3013; *Mid-Hudson Val. Fed. Credit Union v Quartararo & Lois, PLLC*, 31 NY3d 1090, 1091 [2018]), the motion to dismiss should be granted. Indeed, “allegations consisting of bare legal conclusions as well as factual claims flatly contradicted by documentary evidence are not entitled to any such consideration” (*Garber v Board of Trustees of State Univ. of NY*, 38 AD3d 833, 834 [2d Dept 2007], *quoting Maas v Cornell Univ.*, 94 NY2d 87, 91 [1999]). CPLR §2013, states that “[s]tatements in a pleading shall be sufficiently particular to give the court and parties notice of the transactions, occurrences, or series of transactions or occurrences, intended to be proved and the material elements of each cause of action or defense.” Thus, conclusory allegations will not suffice (*see DiMauro v Metropolitan Suburban Bus Auth.*, 105 AD2d 236, 239 [2d Dept 1984]; *Fowler v American Lawyer Media*, 306 AD2d 113, 113 [1st Dept 2003]; *Sheriff v Murray*, 33 AD3d 688 [2d Dept 2006]). When the allegations in a complaint are vague or conclusory, dismissal for failure to state a cause of action is warranted (*see Schuckman Realty v Marine Midland Bank, N.A.*, 244 AD2d 400, 401 [2d Dept 1997]; *O’Riordan v Suffolk Ch., Local No. 852, Civ. Serv. Empls. Assn.*, 95 AD2d 800, 800 [2d Dept 1983]).

On a motion to dismiss under CPLR §3211 (a)(1), courts may grant such relief only where the “documentary evidence” is of such nature and quality – “unambiguous, authentic, and undeniable” – that it utterly refutes plaintiff’s factual allegation, thereby conclusively establishing a defense as a matter of law (*see Phillips v Taco Bell Corp.*, 152 AD3d 806, 806-807 [2d Dept 2017]; *VXI Lux Holdco S.A.R.L v SIC Holdings, LLC*, 171 AD3d 189, 193 [1st Dept 2019] [“A paper will qualify as ‘documentary evidence’ if ... (1) it is ‘unambiguous,’ (2) it is of ‘undisputed authenticity,’ and (3) its contents are ‘essentially undeniable’”]). The Appellate Division, First Department, has explained that the documentary evidence must “definitely dispose of the plaintiff’s claim” (*Art & Fashion Group Corp. v Cyclops Prod., Inc.*, 120 AD3d 436, 438 [1st Dept 2014]).

Based on the aforementioned principles the court finds as follows:

**I. The General Release Is Valid, Enforceable, and Bars All Claims Accruing Prior to November 23, 2022**

Here, one of the primary grounds for dismissal lies in the general release executed by Plaintiff on November 23, 2022, as part of a negotiated settlement following the NYPD’s disciplinary charges. The settlement followed Plaintiff’s guilty plea to seven serious specifications, including fraudulently submitting overtime reports, abusing sick leave, misusing City computer systems, and improperly engaging in off-duty employment while on the clock. In exchange for reduced penalties, Plaintiff agreed to a broad and express waiver of claims:

*“I hereby acknowledge, release and discharge the City of New York and the New York City Police Department from all actions, causes of action... from the beginning of my date of appointment as a New York City Police Officer to the date of this release.”*

It is well-established that a general release constitutes a complete bar to claims encompassed by its terms. As the Court of Appeals held in *Centro Empresarial Cempresa S.A. v América Móvil, S.A.B. de C.V.*, 17 NY3d 269, 276 (2011), “[a] valid release constitutes a complete bar to an action on a claim which is the subject of the release.” Where, as here, the language is clear and unambiguous, it must be enforced as written.

Plaintiff argues that the release should be voided as an adhesion contract, executed under economic duress. This argument fails both as a matter of law and fact. The doctrine of economic duress requires a showing that a party was forced to agree to terms by means of a wrongful threat that precluded the exercise of free will and left no reasonable alternative (*see Kamerman v. Steinberg*, 891 F.2d 424, 431 [2d Cir. 1989]). Plaintiff—a senior lieutenant represented by union counsel—was not deprived of reasonable alternatives. He was afforded the opportunity to contest the charges at trial, avail himself of administrative due process, or negotiate different terms. Instead, he voluntarily opted for a negotiated resolution.

Moreover, courts have repeatedly upheld the enforceability of releases executed in disciplinary settlements with public employees (*see Leder v. Spiegel*, 31 AD3d 266 [1st Dept 2006], *aff’d*, 9 NY3d 836 [2007]; *Centro*, 17 NY3d at 276, *supra*). Plaintiff’s suggestion that the release is void because it does not explicitly list “discrimination” claims misstates the law. A general release need not enumerate every conceivable legal theory waived so long as its language is broad and unambiguous—which it is here.

That Plaintiff may now regret the consequences of his disciplinary history or the bargain he struck does not render the release invalid. The court declines to recast a duly executed settlement as void simply because Plaintiff subsequently sought to repudiate it. To do so would undermine the integrity of negotiated settlements and inject uncertainty into the finality of disciplinary dispositions.

## **II. Plaintiff’s Proposed Claims Post-Dating the Release Fail as a Matter of Law**

While Plaintiff attempts to salvage portions of his complaint by arguing that certain allegations postdate the November 23, 2022 release, this effort too must fail. The factual core of Plaintiff’s narrative—including the anonymous complaint to IAB, alleged interference in his divorce, and Pagan’s purported vendetta—all occurred prior to the effective date of the release. Even generously construing Plaintiff’s pleading to identify events occurring in late 2022 or early 2023, those events are merely residual effects of alleged misconduct that had already transpired (*see Liberty Sq. Realty Corp. v. The Doe Fund, Inc.*, 202 AD3d 55, 69–70 [1st Dept 2021][courts may reject “conclusory or speculative” claims that fail to allege concrete facts within limitations period]).

Moreover, even if some discrete events occurred post-release, Plaintiff fails to plausibly allege that those events constituted actionable violations under the CHRL. No new or independent

adverse employment action is pled after the release. Plaintiff retired from the NYPD in January 2023, but offers no facts suggesting a constructive discharge or forced separation beyond vague allegations of reputational harm and divorce-related stress—none of which constitute adverse action under CHRL precedent (*see Hunter v. Barnes & Noble, Inc.*, 2023 NY Slip Op 30638(U) [Sup. Ct. N.Y. Cnty 2023]). Even assuming some discrete act occurred after November 2022, Plaintiff points only to reputational harm or divorce costs—none constitute an “adverse employment action” under CHRL standards (*id.*).

### III. Associational Discrimination Based on Sex or Gender Is Not Cognizable Under CHRL § 8-107(20)

Even if not barred by the general release, Plaintiff’s associational discrimination claims fail as a matter of statutory construction. Section 8-107(20) of the CHRL prohibits discrimination “because of the actual or perceived race, creed, color, national origin, disability, age, sexual orientation, uniformed service or immigration or citizenship status of a person with whom such person has a known relationship or association.” Notably, the statute omits sex or gender as a protected basis for associational claims.

The doctrine of *expressio unius est exclusio alterius*—the expression of one thing implies the exclusion of another—counsels against judicially inserting categories omitted by the Legislature (*see Kimmel v. State of N.Y.*, 29 NY3d 386, 394 [2017]). Where, as here, the Legislature specifically enumerated protected categories but omitted others, courts may not imply a broader scope of liability (*see also People v. Corr*, 42 NY3d 668 [2024]). The legislative silence with respect to sex/gender association cannot be overlooked or judicially corrected.

Accordingly, Plaintiff’s claim that he was discriminated against due to his relationship with Ms. Ahmad—who allegedly filed a sexual harassment complaint against Defendant Pagan—does not state a cognizable associational discrimination claim under the CHRL. Indeed, Plaintiff nowhere alleges he was targeted due to Ms. Ahmad’s race, creed, color, national origin, disability, age, sexual orientation, or any other enumerated trait. He simply contends he was discriminated against because Ms. Ahmad is Ms. Ahmad.

Courts have recognized associational claims when the plaintiff is penalized for involvement with a protected class member. But no case holds that discrimination because of a relationship with a non-protected individual—here, a civilian woman—gives rise to liability. In the absence of any caselaw, such a claim is unprecedented and cannot survive even the liberal pleading standards cited above. To be sure, Plaintiff’s core theory—that he was singled out not for any protected characteristic of his partner but simply for “who he was sleeping with”—finds no parallel in the case law. In fact, the court is unaware of any New York case law extending the principle of associational discrimination where an individual is penalized for a relationship with a member of a protected class (for example, a man subject to adverse treatment because he is involved with another man), to situations in which the associate’s traits fall entirely outside the CHRL’s enumerated protections.

Section 8-107(20) of the CHRL expressly bars discrimination based on the actual or perceived race, creed, color, national origin, disability, age, sexual orientation, uniformed service

or immigration status of one's associate. It does not mention gender or sex, nor does it contemplate discrimination arising from association with a heterosexual or Muslim woman—or any non-enumerated category. Plaintiff's attempt to recast his claim as "sex/gender association" thus directly conflicts with the statute's plain terms, and no amount of amended pleading can rewrite the Legislature's carefully chosen list of protected traits.

#### **IV. Retaliation Claim Fails for Lack of Protected Activity and Causal Nexus**

Next, the court turns to Plaintiff's retaliation claims. To state a prima facie case of retaliation under the CHRL, a plaintiff must plead: (1) participation in a protected activity; (2) employer knowledge; (3) conduct reasonably likely to deter protected activity; and (4) a causal link (*see D'Angelo v. City of New York*, 2018 N.Y. Slip Op. 33292(U) [Sup. Ct. N.Y. Cnty. 2018]).

Plaintiff does not meet this standard. He alleges that he reported anonymous emails and false allegations to IAB but fails to allege that he opposed unlawful discrimination or engaged in any protected EEO-related conduct. Simply being associated with someone who complained about discrimination does not, without more, constitute protected activity under the CHR (*see Sanderson-Burgess v. City of New York*, 173 AD3d 1233, 1235 [2d Dept 2019]). Plaintiff does not plead that he personally complained to any NYPD supervisor about discriminatory conduct directed at himself or others.

Furthermore, there is no plausible allegation of retaliatory conduct. The complaint does not connect any alleged employer action to Plaintiff's supposed protected conduct. Plaintiff's speculation that Pagan or an unnamed City employee contacted his ex-wife is unsupported by factual allegations sufficient to raise an inference of retaliation. Indeed, Plaintiff repeatedly hedges his allegations with qualifiers such as "on information and belief" or "at the very least," which courts routinely reject at the pleadings stage (*see Myers v. Schneiderman*, 30 NY3d 1, 11 [2017]). Plaintiff's conclusory allegations that "someone must have leaked information to my ex wife" or that Pagan "must have acted out of vengeance" do not meet the plausibility standard (*id.*). They are mere speculation (*id.*). Having alleged only that he reported anonymous e-mail impersonations to IAB—an act wholly disconnected from opposing unlawful discrimination—Plaintiff cannot point to a single decision or statutory provision recognizing "retaliation by association" absent participation in a protected proceeding.

The CHRL does not authorize retaliation claims predicated on mere association. A few federal courts have recognized "third party retaliation" when an employee is targeted for supporting another's claim—but always where the underlying claim was protected. Here, Plaintiff never alleges he advocated on Ms. Ahmad's behalf or filed an EEO complaint himself.

#### **V. Strict Liability Claims Cannot Survive in the Absence of an Underlying Violation**

Lastly, Plaintiff's strict liability claims under CHRL § 8-107(13)(b) are defective as a matter of law. The City may be held strictly liable for discriminatory conduct by managerial employees only where there is an underlying violation of the CHR (*see Henry v. Ground*, 2022

N.Y. Slip Op 31859(U) [Sup. Ct. N.Y. Cnty]; *Hunter, supra*). Where no primary violation exists—as is the case here—there can be no secondary liability.

Plaintiff’s strict liability claims are doubly flawed. First, they are premised on alleged discriminatory acts by Pagan against Ms. Ahmad, not Plaintiff. Second, as discussed, Plaintiff fails to plead any primary act of discrimination or retaliation committed against him. Without such a predicate, the strict liability theory is legally untenable.

In sum, the court finds that the claims alleged in the complaint are either (1) barred by a valid, enforceable release; (2) time-barred under applicable limitations periods; or (3) fail to state a legally cognizable cause of action under the CHRL. Plaintiff’s attempt to relabel the consequences of his disciplinary proceeding as retaliatory or discriminatory is unavailing. His speculative allegations, conclusory assertions, and flawed legal theories do not withstand scrutiny under CPLR §§ 3211(a)(1), (5), or (7). The proposed amendments offer no meaningful cure and would serve only to prolong an action that is legally deficient. The motion to dismiss is thus granted in full, and leave to amend is denied.

Accordingly, it is hereby:

ORDERED that Defendant City of New York’s motion to dismiss the complaint pursuant to CPLR §§ 3211(a)(1), (5), and (7) is granted in its entirety; and it is further

ORDERED that Plaintiff’s cross-motion for leave to amend the complaint is denied; and it is further

ORDERED that the complaint is dismissed with prejudice as against all Defendants.

This constitutes the decision and order of the court.

HASA A. KINGO, J.S.C.

7/30/2025  
DATE

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED	
<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED

<input type="checkbox"/>	NON-FINAL DISPOSITION	
<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/> OTHER

APPLICATION:

<input type="checkbox"/>	SETTLE ORDER
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN

<input type="checkbox"/>	SUBMIT ORDER	
<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE

CHECK IF APPROPRIATE: