Doe v Cuomo
2025 NY Slip Op 33978(U)
October 16, 2025
Supreme Court, New York County
Docket Number: Index No. 157515/2024
Judge: James E. d'Auguste
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **Hon. James E. d'Auguste** **PART 55**

Justice

---X

JANE DOE,

Plaintiff,

- v -

ANDREW CUOMO, MELISSA DEROSA, RICHARD AZZOPARDI,

Defendants.

---X

INDEX NO. 157515/2024

MOTION DATE 05/22/2025

MOTION SEQ. NO. 002 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 46, 47, 48, 49, 50, 51, 52, 64, 66, 68, 69, 70, 71, 72, 73, 74, 75, 84, 88

were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 65, 67, 76, 77, 78, 79, 80, 81, 82, 83, 85, 89, 90, 91

were read on this motion to/for DISMISS.

I. PROCEDURAL POSTURE

On February 17, 2022, Jane Doe, plaintiff herein, commenced an action (the "Federal Action") against Andrew Cuomo and Melissa DeRosa, defendants herein, as well as the New York State Police (the "NYSP"), in the United States District Court for the Eastern District of New York (the "Federal Court"). NYSCEF Doc. No. 21. The following day, Doe filed an amended complaint in the Federal Action, adding Richard Azzopardi as a defendant. NYSCEF Doc. No. 23. In the amended complaint in the Federal Action, Doe asserted claims against Cuomo for discrimination and retaliation under the Equal Protection Clause of the United States Constitution, as well as claims against Cuomo, DeRosa, and Azzopardi for discrimination and retaliation under the New York State Human Rights Law ("NYSHRL") and New York City Human Rights Law ("NYCHRL"). *Id.* ¶¶ 160-89.

More than one year later, on April 27, 2023, Doe filed a second amended complaint ("Federal SAC") in the Federal Action. NYSCEF Doc. No. 61. The Federal SAC alleged generally the same facts and causes of action as the Federal amended complaint, though it added a new cause of action against the NYSP.

On July 12, 2024, the Federal Court granted a motion to dismiss the NYCHRL and NYSHRL discrimination and retaliation claims against Cuomo, DeRosa, and Azzopardi, on the grounds that no employer-employee relationship existed. NYSCEF Doc. No. 71. On July 16, 2024, Doe

moved for reconsideration of the dismissal of the discrimination claim (but not the retaliation claim) against DeRosa in the Federal Action. NYSCEF No. 27. On August 9, 2024, the Federal Court denied that motion. NYSCEF No. 28.

On August 23, 2024, Doe again sought to amend her complaint in the Federal Action. The proposed third amended complaint ("Federal TAC") acknowledged some of the Federal Court's prior dismissal of various claims and the dismissal of Azzopardi as a defendant but nonetheless sought to preserve DeRosa as a defendant. The Federal Court, however, noted that "none of the substantive allegations in the proposed [Federal TAC] differ from the" Federal SAC and denied the motion to amend. NYSCEF Doc. No. 48 at 2. Accordingly, of the three defendants in this action, only Cuomo remains as a current defendant in the Federal Action.

Shortly before filing her proposed Federal TAC in the Federal Action, Doe commenced this action on August 15, 2024. NYSCEF Doc. No. 1. The complaint herein asserted against Cuomo, DeRosa, and Azzopardi a single cause of action for interference under the NYCHRL. *Id.* On November 4, 2024, Doe filed an amended complaint. NYSCEF Doc. No. 37. Both of the state complaints lift most if not all of their allegations directly from the complaints in the Federal Action. *Cf.* NYSCEF Doc. Nos. 37 and 61.

DeRosa and Azzopardi have jointly moved to dismiss this action as against them (NYSCEF Motion Sequence No. 002) and Cuomo has separately moved to dismiss this action as against himself. NYSCEF Motion Sequence No. 003. All of the defendants move to dismiss for failure to state a claim, with DeRosa and Azzopardi also seeking dismissal on grounds of res judicata and with Cuomo separately seeking dismissal due to the pre-existence of the related Federal Action.

II. RELEVANT ALLEGATIONS AND UNDISPUTED FACTS

Doe is a trooper who has worked as a law enforcement officer with the NYSP since March 2015. NYSCEF Doc. No. 37 ¶¶ 17-18. Cuomo served as the governor of New York State from January 2011 to August 2021. *Id.* ¶ 13. During the relevant time period, DeRosa was a senior deputy of Cuomo and Azzopardi was his spokesman. *Id.* ¶ 8.

Doe alleges that she was first assigned to provide security for Cuomo in November 2017 and that, starting in September 2018, Cuomo began making increasingly personal, inappropriate, and sexually harassing comments to her. *Id.* ¶¶ 19, 32-36. Doe further alleges that, starting at the end of 2018, Cuomo's conduct, in addition to the harassing comments, also became physically harassing, including an unwanted hug, kissing and touching of her spine and stomach. *Id.* ¶¶ 37, 41-43, 51-52, 63.

Doe alleges that Cuomo later acknowledged and apologized for some aspects of his conduct towards her. *Id.* ¶¶ 89-93. However, when Doe "hired counsel and intended to assert her legal rights," "DeRosa publicly accused Doe of 'extortion' and threatened legal action." *Id.* ¶¶ 94-95. Doe also asserts that on "the same day Doe filed a federal action against Cuomo and DeRosa, Cuomo and Azzopardi penned a statement that Azzopardi published on social media accusing Doe and her counsel of an attempt to 'extort' a settlement and 'cheap cash extortions.'" *Id.* ¶ 96.

Finally, Doe alleges that "[m]ost recently, DeRosa and Azzopardi threatened to sue Doe if she continued to pursue her legal claims against them." *Id.* ¶ 98.

III. ANALYSIS

A. Dismissal Pursuant to CPRL 3211(a)(5)

DeRosa and Azzopardi move, pursuant to CPLR 3211(a)(5), to dismiss this action as against them on grounds of res judicata. "[O]nce a claim is brought to a final conclusion, all other claims arising out of the same transaction or series of transactions are barred, even if based upon different theories or if seeking a different remedy." *Parker v. Blauvelt Volunteer Fire Co*., 93 N.Y.2d 343, 347 (N.Y. 1999) (citation omitted). Res judicata "applies not only to claims actually litigated but also to claims that could have been raised in the prior litigation." *In re Hunter*, 4 N.Y.3d 260, 269 (N.Y. 2005); *see also Paramount Pictures Corp. v Allianz Risk Transfer AG*, 31 N.Y.3d 66, 84 (2018) (where the plaintiff's state claim was "transactionally related to the [] federal claim [it] should have been raised in the federal lawsuit" and "it may not avoid the consequences of its choice simply by crossing the street and filing in state court."). Here, the instant case arises out of the same set of facts as the Federal Action and Doe, who had already asserted two causes of action under the NYCHRL in the Federal Action, could have also asserted in the Federal Action the interference cause of action which is brought under a different paragraph of the NYCHRL.

Doe contends that the dismissal of the claims against DeRosa and Azzopardi in the Federal Action is not a final judgment or a dismissal on the merits. NYSCEF Doc. No. 75 at 11. However, "[t]he requirement of finality for purposes of res judicata does not necessarily mean a final judgment in an action." *Hennessy v. Cement & Concrete Worker's Union Local 18*, 963 F. Supp. 334, 338 (S.D.N.Y. 1997) (citing *Bannon v. Bannon*, 270 N.Y. 484, 489 (1936), and collecting cases). Moreover, Rule 41(b) of the Federal Rules of Civil Procedure provides that a dismissal, "except one for lack of jurisdiction, improper venue, or failure to join a party under Rule 19 [] operates as an adjudication on the merits." Fed. R. Civ. P. 41(b).

Illustrative is *Belton v. Borg & Ide Imaging, P.C.*, 220 A.D.3d 1174, 1175-76 (4th Dep't 2023), in which the court held that the age and race discrimination and retaliation claims under the NYSHRL brought in New York state court were barred by res judicata due to the earlier dismissal of age and race discrimination and retaliation claims in federal court. The court first noted that when interpreting Rule 41(b), "the Court of Appeals has concluded that '[i]n [f]ederal court, as distinguished from our [s]tate courts, a dismissal is on the merits unless the contrary expressly appears.'" *Id.* at 1175 (quoting *McLearn v. Cowen & Co.* 48 N.Y.2d 696, 699 (1979), *on rearg* 60 N.Y.2d 686 (1983)). The court further held:

> Although plaintiff's complaint in state court provided more factual detail than her federal complaint, that additional detail either pertained to claims that were dismissed in the federal action, or – if they were not raised in that action – could have been raised at that time .... To the extent that the complaint in this action asserts claims not contained in the federal complaint – *i.e.*, claims that defendants retaliated by constructively discharging her from employment – we conclude that

> those claims are nonetheless precluded inasmuch as they are predicated on factual allegations that either were raised or could have been raised during the federal action ....

Id. at 1176-77.

Finally, Doe argues that res judicata does not apply where the subsequent action is based on subsequent events that "could not have been raised in a prior action ...." NYSCEF Doc. No. 75 at 12 (quoting *Altman v. Orseck*, 235 A.D.3d 818, 819 (2d Dep't 2025)). However, there is no new allegation in this action that could not have been previously raised in the Federal Action.

Specifically, the sole factual allegation in the amended complaint herein regarding a subsequent event that is not alleged in Doe's Federal SAC alleges: "Most recently, DeRosa and Azzopardi threatened to sue Doe if she continued to pursue her legal claims against them." NYSCEF Doc. No. 37 ¶ 98. That alleged threat was contained in a letter from DeRosa and Azzopardi's counsel to Doe's counsel dated July 24, 2025. NYSCEF Doc. No. 82. Doe was therefore aware of this alleged threat when she sought on August 23, 2024 to amend her complaint in the Federal Action. Indeed, Doe had yet more time to bring the letter to the attention of the Federal Court, as that court did not actually decide that motion until April 28, 2025. *See* NYSCEF Doc. No. 48. Accordingly, any potential new claims arising from counsel's July 2024 letter could have been timely raised in the Federal Action.

In light of the foregoing, DeRosa and Azzopardi have established that this action should be dismissed as against them pursuant to CPLR 3211(a)(5).

B. Dismissal Pursuant to CPRL 3211(a)(7)

The amended complaint herein alleges that the defendants violated the NYCHRL's anti-interference provision, N.Y.C. Admin. Code § 8-107(19) ("Section 8-107(19)"), which provides that: "[i]t shall be an unlawful discriminatory practice for any person to coerce, intimidate, threaten or interfere with, or attempt to coerce, intimidate, threaten or interfere with, any person in the exercise or enjoyment of, or on account of such person having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected pursuant to this section." NYSCEF No. 37 ¶¶ 100-04; N.Y.C. Admin. Code § 8-107(19). Accordingly, in order to set forth a viable claim for interference under Section 8-107(19), a plaintiff must sufficiently allege that a defendant attempted to or did threaten or interfere with the exercise of a right granted or protected under the NYCHRL.

1. NYCHRL-Recognized Relationship and NYCHRL-Protected Right

Defendants argue in their motion papers that, although required by Section 8-107(19), Doe has failed to allege or identify a "right granted or protected" under the NYCHRL with which they allegedly interfered. *E.g.*, NYSCEF Doc. No. 52 at 2, 17-18. In response, Doe's opposition papers dodge the issue, pointing to her allegations that defendants accused Doe of extortion and threatened to sue her for malicious prosecution and arguing, without more, that "[t]hese allegations are sufficient to plead interference." NYSCEF Doc. No. 75 at 10. However,

allegations regarding the nature of the *threats* are plainly insufficient to plead the NYCHRL-protected *right* that was supposedly interfered with, which is a requisite element of the claim. N.Y.C. Admin. Code § 8-107(19).

Doe's failure in this regard connects with her failure to plead a NYCHRL-recognized relationship between her and each of the defendants. The Federal Court, in dismissing the NYCHRL claims in the Federal Action, held that Doe, on the same substantive allegations as those asserted herein, failed to allege an employment relationship or other materially significant "ongoing economic relationship" sufficient to support her claims under the NYCHRL. NYSCEF Doc. No. 25 at 14, 16-17 (citing *Eckhart v. Fox News Network, LLC*, No. 20-cv-5593, 2021 WL 4124616, at *1 (S.D.N.Y. Sept. 9, 2021) (dismissing retaliation claim because there was no employment relationship or ongoing economic relationship between the parties at time of alleged retaliation)). That decision, along with the pertinent case law it cites and Doe's failure to allege an employment relationship in the instant case, would appear to preclude Doe's attempt to assert another claim under the NYCHRL.

To escape the Federal Court's ruling, Doe argues that, unlike discrimination and retaliation claims under the NYCHRL, interference claims thereunder need not be tethered to an employment or other "ongoing economic relationship." Indeed, Doe goes much further, asserting that the NYCHRL's interference provision "prohibits interference by 'any person' – without qualification." *Id.* (quoting N.Y.C. Admin. Code § 8-107(19)). Doe thus contends that she may prove a claim under Section 8-107(19) without alleging the existence of any statutorily-contemplated relationship between the defendants (*i.e.*, the alleged interferors) and her (*i.e.*, the alleged interferee). Taken together with Doe's position that she need not identify the NYCHRL-protected right that defendants have allegedly interfered with, Doe is ultimately advocating for an interpretation of Section 8-107(19) as a provision of expansive breadth and reach. Under Doe's reading, she may assert under Section 8-107(19) a claim for interference: (1) by any person, however remote from her; (2) with any of her rights, however unconnected to the subject matter of the NYCHRL.

Doe's proffered interpretation of Section 8-107(19) is erroneous. Indeed, even Doe, when noting that the NYCHRL prohibits "interference across a broad spectrum, including employment, housing and public accommodations," implicitly acknowledges that, under Section 8-107(19), the interference must arise in connection with a relationship contemplated by the NYCHRL such as a relationship existing in the contexts of "employment, housing and public accommodations." NYCHRL Doc. No. 75 at 5. As DeRosa and Azzopardi have correctly argued, "all the rights outlined in Section 8-107 are relational in nature. For example, the right to be free from discrimination in the workplace is against the employer, NYCHRL § 8-107(1); the right to be free from housing discrimination is against the landlord, NYCHRL § 8-107(5); and the right to be free from discrimination in public accommodations is against the owners of the accommodations, NYCHRL § 8-107(4). Thus, Plaintiff's complaint, which concerns employment discrimination, must allege an employment relationship. There is no basis [] to sue a private party, with whom she has no relationship whatsoever, for interference with her employment rights." NYSCEF Doc. No. 88 at 11-12.

Doe urges her expansive interpretation of Section 8-107 by focusing on two words ("any person") in a vacuum, but a statute must be construed as a whole. *E.g.*, *People ex rel. Subramaniam v. Annucci*, 227 A.D.3d 26 (1st Dep't 2024). In that regard, it is useful to consult the NYCHRL's preamble, which helps clarify the statute's intended parameters: "A city agency is hereby created with the power to eliminate and prevent discrimination ... relating to employment, public accommodations, and housing and other real estate ...." N.Y.C. Admin. Code § 8-101. Indeed, throughout the NYCHRL, its definitions, prohibitions, and affirmative requirements are suffused with references to "employment," "housing," and "public accommodation," or variations thereof. N.Y.C. Admin. Code §§ 8-101-34, *passim*. Doe has not in any of her papers identified or alleged any other types of relationships that are regulated by the NYCHRL and apply to her relationship with defendants.

Because Doe has failed to sufficiently allege and identify both a NYCHRL-recognized relationship with defendants and a NYCHRL-protected right that defendants interfered with, her claim pursuant to Section 8-107(19) must be dismissed as against all defendants.

2. Actionable Threat

Defendants additionally argue that Doe has failed to allege an actionable threat by them against her. *E.g.*, *Poolt v. Brooks*, 2013 WL 323253, at *16 (Sup. Ct. N.Y. Cnty. 2013) ("Threats are required to state a claim for violation of Admin Code § 8-107(19)"). The Court notes that the amended complaint alleges only three threats made against Doe: (1) in November 2021 DeRosa accused Doe of "extortion" and threatened legal action; (2) in February 2022 Cuomo and Azzopardi penned a statement that Azzopardi published on social media accusing Doe and her counsel of attempting to extort a settlement; and (3) DeRosa and Azzopardi threatened to sue Doe if she continued to pursue her legal claims against them. NYSCEF Doc. No. 37 ¶¶ 95, 96, 98.

Defendants all argue that these allegations cannot, as a matter of law, constitute an actionable threat, and Cuomo further argues that Doe has not sufficiently pled threats that were made specifically by him. As an initial matter, it is not at all clear to the Court that, where parties are already engaged in a highly public litigation, a threat of further litigation or a defendant's characterization of the plaintiff's litigation strategy as "extortion" constitutes an actionable threat under Section 8-107(19), especially where the defendants have in fact had litigation success in dismissing some or all of the claims against them. Moreover, the Court notes that the only threat not already alleged by Doe in the Federal Action is the last one allegedly made by DeRosa and Azzopardi. *See* NYSCEF Doc. No. 37 ¶ 98. Accordingly, Doe's ostensible basis for bringing this action against Cuomo – *i.e.*, a new threat that she contends could not have been raised in the Federal Action – does not apply to Cuomo.

The Court, however, need not conclusively address these issues because Doe's pleading of an actionable threat fails for a separate reason. Specifically, Doe agrees that the Section 8-107(19) "makes actionable intimidation, threats or interference with ... a person's exercise or enjoyment of rights protected under" the NYCHRL. NYSCEF Doc. No. 37 at (quoting *Leizerovici v. HASC Ctr., Inc.*, No. 17 Civ. 5774 (BMC), 2018 WL 1115348, at *12 (E.D.N.Y. Feb. 27, 2018) (citations omitted)). But in citing *Leizerovici*, Doe appears to concede the point that the threat

must be to her exercise of a right actually articulated in the NYCHRL. As held above, however, Doe has failed to allege the NYCHRL-based right with which the defendants interfered. More specifically, Doe has not alleged, nor can the Court discern, how defendants' alleged accusations of extortion and DeRosa and Azzopardi's conditional threat to sue her have interfered with any of her rights set forth in the NYCHRL.

3. Connection to NYC

Defendants argue that a claim pursuant to the NYCHRL must have a sufficient connection to New York City ("NYC") and that Doe has failed to adequately plead same. In support of their argument, defendants note that the NYCHRL declares that violations thereunder "threaten the rights and proper privileges of [NYC's] inhabitants" and that "[i]n the city of New York ... there is no greater danger to the health, morals, safety and welfare of the city and its inhabitants than the existence of groups prejudiced against one another ... because of their actual or perceived difference." N.Y.C. Admin. Code § 8-101. Accordingly, courts have held that the NYCHRL is intended to "cover people who work" in NYC and "the impact of the employment action must be felt by the plaintiff in" NYC. *Vangas v. Montefiore Med. Ctr.*, 823 F.3d 174, 182-83 (2d Cir. 2016) (citation omitted); *see also Hoffman v. Parade Publ'ns*, 15 N.Y.3d 285, 290 (2010) (plaintiff failed to assert a claim under the NYCHRL where plaintiff was not employed and did not reside in NYC and plaintiff, at most, "pleaded that his employment had a tangential connection to the city").

Doe does not plead that she, DeRosa or Azzopardi resides or regularly works in NYC, that any of DeRosa's and Azzopardi's alleged conduct took place in NYC, or that she had a NYCHRL-recognized relationship with DeRosa and Azzopardi in NYC. While Doe does allege that the Counsel Letter was sent from DeRosa and Azzopardi's counsel in NYC to her counsel in NYC, Doe does not allege that the letter caused injury to her NYCHRL-protected rights in NYC. Accordingly, Doe has failed to adequately plead that her claim as against DeRosa and Azzopardi pursuant to Section 8-107(19) is sufficiently connected to NYC.

Doe alleges that Cuomo, when he was governor, had an office in NYC and that some of his alleged harassment of Doe took place in NYC. *E.g.*, NYSCEF Doc. No. 37 ¶¶ 19, 37, 56, 60-63. However, the gravamen of Doe's interference claim against Cuomo pursuant to Section 8-107(19) is not his alleged harassment of Doe while he was governor, but rather the alleged single accusation of extortion that Cuomo purportedly co-wrote (but was actually published by Azzopardi) after Cuomo was no longer governor. Accordingly, in addition to the fact that Doe does not plead that she resides or regularly works in NYC, Doe also does not plead that, since Cuomo left office, he resides or regularly works in NYC, that he co-wrote the accusation in NYC, that he had a NYCHRL-recognized relationship with Doe in NYC, or that Cuomo's alleged accusation of extortion caused harmed to Doe's NYCHRL-protected rights in NYC.

Accordingly, Doe has failed to adequately plead that her claim as against Cuomo pursuant to Section 8-107(19) is sufficiently connected to NYC.

C. Dismissal Pursuant to CPRL 3211(a)(4)

Finally, Cuomo has sought dismissal based on the pendency of the pre-existing Federal Action against him. CPRL 3211(a)(4) provides that a court may dismiss an action where, as here, "there is another action pending between the same parties for the same cause of action in a court of any state or the United States." CPRL 3211(a)(4). The First Department has established that "[t]he court has broad discretion to dismiss an action on the ground that another action is pending between the same parties arising out of the same subject matter or series of alleged wrongs, and it is inconsequential that different legal theories or claims were set forth in the two actions." *Shah v. RBC Capital Mkts. LLC*, 981 115 A.D.3d 444, 444-45 (1st Dep't 2014).

As an initial matter, "New York courts generally follow the so-called 'first-in-time' rule, which provides 'the court which has first taken jurisdiction is the one in which the matter should be determined and it is a violation of the rules of comity to interfere.'" *Syncora Guar. Inc. v. J.P. Morgan Secs. LLC*, 110 A.D.3d 87, 95 (1st Dep't 2013) (quoting *White Light Prods., Inc. v. On the Scene Prods., Inc.*, 231 A.D.2d 90, 96 (1st Dep't 1997)). Here, as noted, Doe's factual allegations herein are nearly identical to the allegations in the Federal Action and Doe's sole cause of action herein arises under the same statute that Doe alleged was violated in the Federal Action. *See GMF 157 LP v. Inspirit Dev. and Constr., LLC*, 235 A.D.3d 493, 494 (1st Dep't 2025) (finding a "substantial identity of issues" where two actions "arise out of the same alleged series of wrongs" and "[m]any of the allegations in both actions overlap") (internal quotes omitted); *Syncora*, 110 A.D.3d at 96.

Doe brought this action some two and one-half years after she commenced the Federal Action. By the time Doe initiated this action she had already, in the Federal Action, filed three complaints (and was about to try to file a fourth), participated in substantial discovery, and had just weeks earlier had a number of her claims and two defendants dismissed from the case. Indeed, the Court takes judicial notice of the publicly accessible docket in the Federal Action setting forth more than 440 docket entries which demonstrate the extensive legal and factual development of that action, including the prodigious amounts of party and nonparty discovery that has taken place therein. *See generally* ECF Civil Docket, Case No. 1:22-cv-00893 (EDNY); *accord* NYSCEF Doc. No. 55 ¶¶ 10-12. It is clear that the lengthy pendency of, and substantial procedural and factual development in, the Federal Action would require convincing reasons, not set forth by Doe herein, to depart from the general "first-in-time" rule.

In addition, the First Department has made clear that a plaintiff who intentionally forgoes pursuing a claim in a prior action is not entitled to gain a strategic advantage by pursuing the claim in a second action. *E.g.*, *Shah*, 115 A.D.3d at 445 (affirming dismissal of complaint under CPLR 3211(a)(4) where complaint was an "attempt to overcome [the plaintiff's] failure to amend her complaint in the [prior] action"); *PK Rest., LLC v. Lifshutz*, 138 A.D.3d 434, 436 (1st Dep't 2016) (affirming dismissal of complaint under CPLR 3211(a)(4) where the "plaintiff can seek leave to supplement its complaint in the other action"); *see also Syncora*, 110 A.D.3d 87 at 95 (reversing trial court's denial of CPLR 3211(a)(4) motion and holding that the plaintiff "[h]aving made its own strategic decision ... to proceed initially in federal court, [] is bound by the effects of the path it charted"); *Certain Underwriters at Lloyd's, London v. Hartford Acc. & Indem. Co.*, 16 A.D.3d 167, 168 (1st Dep't 2005) (dismissal pursuant to CPLR 3211(a)(4) is

appropriate where the "action was motivated simply by plaintiffs' wish to gain a tactical advantage through forum shopping"); *accord Liebert v. TIAA-CREF*, 34 A.D.3d 756, 757 (2d Dep't 2006) (noting "the public policy against forum shopping").

In addition, the Court takes note of the burdens and inefficiencies that would be imposed by the pendency of two closely related actions. For example, the separate adjudication of these related actions would burden the courts with significant duplicative work and would also raise the danger of conflicting rulings between this Court and the Federal Court. *E.g.*, *White Light*, 231 A.D.2d at 93 (dismissal under CPLR 3211(a)(4) is warranted "as a matter of comity … to avoid the potential for conflicts that might result from rulings issued by courts of concurrent jurisdiction"). In addition, Cuomo would be forced to defend against similar claims being litigated in two separate courts. *E.g.*, *LaBuda v. LaBuda*, 174 A.D.3d 1013, 1015 (3d Dep't 2019) (purpose of CPLR 3211(4) "is to prevent a party from being … burdened by having to defend a multiplicity of suits") (citation omitted).

Doe argues that CPLR 3211(4) should not be applied because the cases do not involve the same parties. NYSCEF Doc. No. 75 at 14-15. However, a substantial identity of parties "generally is present when at least one plaintiff and one defendant is common in each action." *Eastgate Whitehouse LLC v. Cagnassola*, 2020 WL 3277490, at *4 (Sup. Ct. N.Y. Cnty. June 16, 2020) (quoting *Morgulas v J. Yudell Realty, Inc.*, 161 A.D.2d 211, 213 (1st Dep't 1990)); *Syncora*, 110 A.D.3d at 96 ("substantial, not complete, identity of parties is all that is required to invoke CPLR 3211(a)(4)"). The "'presence of additional parties' in one of the actions does not destroy the identity of parties." *Eastgate*, 2020 WL 3277490, at *4 (quoting *White Light*, 231 A.D.2d at 94).

All defendants herein were also defendants in the Federal Action. The fact that the Federal Court dismissed DeRosa and Azzopardi as defendants in the Federal Court just a month before Doe commenced this action can hardly be used as a basis to escape the ambit of Rule 3211(a)(4), particularly since, as set forth above, DeRosa and Azzopardi have been dismissed as defendants herein pursuant to Rule 3211(a)(5) and (a)(7).

Doe further argues that the state and federal cases do not involve the same conduct and wrongs. NYSCEF Doc. No. 75 at 12-14. But the allegations in the amended complaint herein are essentially identical to those in the Federal SAC. The one additional allegation in the amended complaint that has been highlighted by Doe – that DeRosa and Azzopardi threatened to sue Doe if she continued to pursue her legal claims against them – does not implicate Cuomo. *See* NYSCEF Doc. No. 37 ¶ 98.

As noted above, Doe could have pursued a claim pursuant to Section § 8-107(19) in the closely related Federal Action and may still attempt to do so. Doe made a strategic choice to commence this action, knowing full well that this Court could, pursuant to CPLR 3211(4), exercise its discretion to dismiss this action as against Cuomo in favor of a unitary action before the Federal Court.

For all of the foregoing reasons, the Court will, pursuant to CPLR 3211(4), exercise its discretion to dismiss this action as against Cuomo.

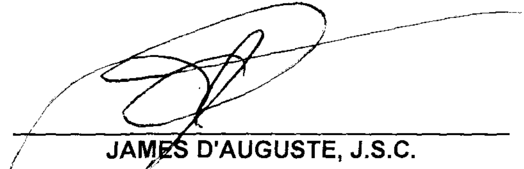
IV. ORDERS

Accordingly, it is hereby

ORDERED that the motion to dismiss of defendants DeRosa and Azzopardi (NYSCEF Motion Sequence No. 002) is granted; and it is further

ORDERED that the motion to dismiss of defendant Cuomo (NYSCEF Motion Sequence No. 003) is granted; and it is further

ORDERED that judgment is awarded to all defendants and that the Clerk is hereby directed to enter judgment dismissing this action as against all defendants.[1]



10/16/2025
DATE

JAMES D'AUGUSTE, J.S.C.

CHECK ONE:	X	CASE DISPOSED			NON-FINAL DISPOSITION		
	X	GRANTED	☐	DENIED	GRANTED IN PART	☐	OTHER
APPLICATION:	☐	SETTLE ORDER		☐	SUBMIT ORDER		
CHECK IF APPROPRIATE:	☐	INCLUDES TRANSFER/REASSIGN		☐	FIDUCIARY APPOINTMENT	☐	REFERENCE

[1] The undersigned appreciates the invaluable assistance of court attorney Andrew Lorin, Esq. in connection with this matter.