SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. JOHN J. KELLEY** **PART** **56M**

Justice

----------X

LIUDMYLA GORADZE,

Plaintiff,

- v -

BORIS ITSKOVICH, M.D., individually and/or doing business as BROOKLYN AESTHETICS BORIS ITSKOVICH CLINIC, ANNA HALIUK, individually and/or in her capacity as an office manager of the Brooklyn Aesthetics Boris Itskovich Clinic, and BROOKLYN AESTHETICS BORIS ITSKOVICH CLINIC, a business entity of unknown legal form,

Defendants.

----------X

INDEX NO. 805186/2025

MOTION DATE 08/28/2025, 08/28/2025, 08/28/2025, 09/05/2025

MOTION SEQ. NO. 001, 002, 003, 004

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 53, 56, 59, 72, 73, 78

were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 21, 22, 23, 24, 25, 51, 52, 54, 57, 60, 74, 75, 79

were read on this motion to/for DISMISSAL.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 26, 27, 28, 29, 30, 32, 33, 55, 58, 68, 69, 70, 71

were read on this motion to/for DISCOVERY.

The following e-filed documents, listed by NYSCEF document number (Motion 004) 61, 62, 63, 64, 65, 67, 76, 77

were read on this motion to/for DISCOVERY.

In this action to recover damages for medical malpractice based on alleged departures from good and accepted practice (first cause of action), lack of informed consent (second cause of action), battery (third cause of action), fraud (fourth cause of action), and negligent and intentional infliction of emotional distress (fifth cause of action), the defendant Anna Haliuk, individually and/or in her capacity as an office manager of the Brooklyn Aesthetics Boris

Itskovich Clinic, appearing pro se, moves pursuant to CPLR 3211(a) to dismiss the complaint insofar as asserted against her (MOT SEQ 001) on the grounds that documentary evidence established a complete defense to the action as against her (CPLR 3211[a][1]), that the complaint fails to state a cause of action against her (CPLR 3211[a][7]), and that the court did not obtain personal jurisdiction over her because she was not properly served with the summons and complaint (CPLR 3211[a][8]). The plaintiff opposes that motion. The defendant Boris Itskovich, M.D., individually and/or doing business as Brooklyn Aesthetics Boris Itskovich Clinic (the Clinic), separately moves pursuant to CPLR 3211(a)(7) to dismiss the battery, fraud, and negligent and intentional infliction of emotional distress causes of action insofar as asserted against him (MOT SEQ 002). The plaintiff also opposes that motion. The plaintiff separately moves pursuant to CPLR 3102(c) and 3120(1) to compel the defendants to preserve and produce any surveillance video evidence in their possession (MOT SEQ 003) concerning the alleged personal delivery of the summons and complaint to Haliuk in the reception room at 2993 Ocean Parkway, Brooklyn, New York on June 30, 2025, between 4:00 p.m. and 5:00 p.m. Haliuk, now represented by counsel, opposes that motion. The plaintiff separately moves pursuant to CPLR 3124 to compel Itskovich to produce items of discovery referable to the jural and legal status of the Clinic (MOT SEQ 004). Itskovich and Haliuk oppose that motion.

Haliuk's motion, pending under Motion Sequence 001, is granted on the ground that causes of action sounding in lack of informed consent, battery, fraud, and intentional and negligent infliction of emotional distress do not state a cause of action against her, and the complaint is thus dismissed insofar as asserted against her.[1] Hence, the court need not reach the alternative grounds for dismissal that Haliuk had raised in her motion, that is, that

[1] The plaintiff did not assert the medical malpractice cause of action against Haliuk, but only against Itskovich. Consequently, that branch of Haliuk's motion purportedly seeking to dismiss that cause of action insofar as asserted against her was unnecessary.

documentary evidence established a complete defense to the action[2] and that the court lacked personal jurisdiction over her because she was not properly served with process.[3] Itskovich's motion is granted, and the battery, fraud, and negligent and intentional infliction of emotional distress causes of action are dismissed insofar as asserted against him, since they fail to state a cause of action. The plaintiff's motion pending under Motion Sequence 003 is denied as academic. The plaintiff's discovery motion pending under Motion Sequence 004 is denied.

In her complaint, the plaintiff alleged as follows:

> "6. On or about October 16, 2024, Plaintiff visited Dr. Itskovich's clinic upon recommendation from Anna Haliuk, who introduced herself as the office manager in this medical clinic.
>
> "7. Plaintiff sought cosmetic procedures, including dermal fillers and Botox injections.
>
> "8. During the visit, Plaintiff was injected by the doctor Boris Itskovich, M.D., with expired dermal fillers retrieved by Anna Haliuk from the bottom of a cabinet in the injection room under Boris Itskovich's supervision.
>
> "9. Plaintiff was never informed that the fillers had expired. No informed consent was provided regarding the risks associated with expired materials.

---

[2] Under CPLR 3211(a)(1), a dismissal is warranted "if the documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law" (*Leon v Martinez*, 84 NY2d 83, 88 [1994]; *see AWL Indus., Inc. v. New York City Hous. Auth.,* 237 AD3d 596, 596 [1st Dept 2025]). In order for evidence to qualify as "documentary," it must be unambiguous, authentic, and "essentially undeniable" (*Dixon v 105 W. 75th St., LLC*, 148 AD3d 623, 629 [1st Dept 2017], citing *Fontanetta v John Doe 1*, 73 AD3d 78 [2d Dept 2010]), that is, it not only must be unambiguous, but of undisputed authenticity (*see* Siegel, Practice Commentaries, McKinney's Cons Laws of NY, Book 7B, CPLR C3211:10, at 21-22; *Fontanetta v John Doe 1*, 73 AD3d at 86). Were to the court to reach this issue, it would be constrained to conclude that Haliuk submitted no documents that would establish a complete defense to the action, since her affirmation and a printout of an internet search purportedly showing that she was not a licensed healthcare provider do not constitute documentary evidence (*see Serao v Bench-Serao*, 149 AD3d 645, 646 [1st Dept 2017] [affidavit is not documentary evidence]; *Art & Fashion Group Corp. v Cyclops Prod., Inc*., 120 AD3d 436, 438 [1st Dept 2014] [same]; *Landow v. Snow Becker Krauss, P.C.,* 36 Misc 3d 1218[A], 2012 NY Slip Op 51393[U], *5, 2012 NY Misc LEXIS 3577, *7 [Sup Ct, Nassau County, Jul. 10, 2012] [printout of a web page is not irrefutable]).

[3] Although a process server's affidavit of service is prima facie evidence of proper service (*see Johnson v Deas*, 32 AD3d 253, 254 [1st Dept 2006]), it may be refuted by a sworn non-conclusory denial of service by a defendant that disputes the veracity or content of the affidavit, thereby requiring a traverse hearing (*see NYCTL 1998-1 Trust v Rabinowitz*, 7 AD3d 459, 460 [1st Dept 2004]). Thus, had the complaint stated a cause of action against Haliuk, this court would have been constrained to defer the determination of this issue until after it had conducted a hearing on the issue of whether service upon her was proper, since she asserted in her affirmation that the summons and complaint was not personally delivered to her, but was instead delivered to a coworker, Bella Grinshpun, and that the plaintiff failed to follow that delivery with a mailing, as required by CPLR 308(2).

> "10. The clinic failed to disinfect the injection sites, violating aseptic protocols recommended by the CDC and WHO.
>
> "11. Dr. Itskovich also used leftover filler from Anna Haliuk's personal syringe to inject into Plaintiffs face, again, without disclosure or consent.
>
> "12. Plaintiff experienced immediate and long-lasting adverse effects, including swelling, discoloration, numbness, and persistent lumps, and later required corrective medical treatment.
>
> "13. Following the procedure, Anna Haliuk offered to falsely classify the service as 'vein treatment' for IRS deduction purposes. She stated that she's responsible for ordering, administering medical supplies, and issuing this kind of document."

The plaintiff alleged that, as an additional consequence of the defendants' alleged wrongdoing, she sustained emotional distress, anxiety, and trauma. She alleged in her first cause of action that Itskovich committed medical malpractice by departing from good and accepted standards of medical care, inasmuch as he injected expired fillers, failed to disinfect the syringes that he employed, and permitted unqualified staff to "influence treatment."[4] As noted above, she did not assert this cause of action against Haliuk. The plaintiff did, however, assert causes of action to recover for lack of informed consent, battery, fraud, and negligent and intentional infliction of emotional distress against all of the defendants.

When assessing the adequacy of a pleading in the context of a motion to dismiss under CPLR 3211(a)(7), the court's role is "to determine whether [the] pleadings state a cause of action" (*511 W. 232nd Owners Corp. v Jennifer Realty Co.*, 98 NY2d 144, 151-152 [2002]). To

[4] Allegations of negligent hiring, training, supervision, and retention of personnel constitute a cause of action independent of a medical malpractice cause of action (*see Calamari v Panos*, 131 AD3d 1088, 1090 [2d Dept 2015] [negligent hiring cause of action against medical practice is subject to three-year limitations period, and allegations of medical malpractice and lack of informed consent did not, in and of themselves, place defendants on notice of negligent hiring cause of action]). The court notes that the plaintiff did not separately plead a such cause of action. Nonetheless, the court deems the allegation of negligent supervision to have been properly asserted by the plaintiff as if it had been separately pleaded (*see Burgos v Lau*, 2025 NY Slip Op 33250[U], *2 n 2, 2025 NY Misc LEXIS 7290, *2 n 2 [Sup Ct, N.Y. County, Aug. 28, 2025] [Kelley, J.]; *Estate of Gebert v Huntington Hills Ctr. for Health*, 2024 NY Misc LEXIS 51911, *16 [Sup Ct, Suffolk County, Sep. 5, 2024]; *see also Taylor v Methodist Hosp.*, 6 Misc 3d 1008[A], 2004 NY Slip Op 51750[U], *4, 2004 NY Misc LEXIS 2898, *9 [Sup Ct, Kings County, Nov. 1, 2004] [deeming allegation of "negligent credentialing" to be an independent cause of action]).

determine whether a claim adequately states a cause of action, the court must "liberally construe" it, accept the facts alleged in it as true, accord it "the benefit of every possible favorable inference" (*id*. at 152; *see Romanello v Intesa Sanpaolo, S.p.A.*, 22 NY3d 881, 884 [2013]; *Simkin v Blank*, 19 NY3d 46, 52 [2012]), and determine only whether the facts, as alleged, fit within any cognizable legal theory (*see Taxi Tours, Inc. v Go New York Tours, Inc.,* 41 NY3d 991, 993 [2024]; *Hurrell-Harring v State of New York*, 15 NY3d 8, 20 [2010]; *Leon v Martinez*, 84 NY2d 83, 87 [1994]; *Weil, Gotshal & Manges, LLP v Fashion Boutique of Short Hills, Inc*., 10 AD3d 267, 270-271 [1st Dept 2004]; CPLR 3026). "The motion must be denied if from the pleading's four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law" (*511 W. 232nd Owners Corp. v Jennifer Realty Co*., 98 NY2d at 152 [internal quotation marks omitted]; *see Leon v Martinez*, 84 NY2d at 87-88; *Guggenheimer v Ginzburg*, 43 NY2d 268, 275 [1977]).

Where, however, the court considers evidentiary material beyond the complaint, as it does here, the criterion becomes "whether the proponent of the pleading has a cause of action, not whether he [or she] has stated one" (*Guggenheimer v Ginzburg*, 43 NY2d at 275), but dismissal will not eventuate unless it is "shown that a material fact as claimed by the pleader to be one is not a fact at all" and that "no significant dispute exists regarding it" (*id*.). Nonetheless, "conclusory allegations—claims consisting of bare legal conclusions with no factual specificity—are insufficient to survive a motion to dismiss" (*Godfrey v Spano*, 13 NY3d 358, 373 [2009]).

The plaintiff does not have a lack of informed consent cause of action against Haliuk because Haliuk established that she was not a physician, and did not provide professional treatment to the plaintiff. The elements of a cause of action to recover for lack of informed consent are

> "(1) *that the person providing the professional treatment* failed to disclose alternatives thereto and failed to inform the patient of reasonably foreseeable risks associated with the treatment, and the alternatives, that a reasonable medical practitioner would have disclosed in the same circumstances, (2) that a reasonably prudent patient in the same position would not have undergone the

> treatment if he or she had been fully informed, and (3) that the lack of informed consent is a proximate cause of the injury"

(*Spano v Bertocci*, 299 AD2d 335, 337-338 [2d Dept 2002] [emphasis added]; *see Zapata v Buitriago*, 107 AD3d 977, 979 [2d Dept. 2013]). For a statutory claim of lack of informed consent to be actionable, a defendant must have engaged in a "non-emergency treatment, procedure or surgery" or "a diagnostic procedure which involved invasion or disruption of the integrity of the body" (Public Health Law § 2805-d[2]). A cause of action alleging lack of informed consent may not be asserted against a person who is not a professional or did not provide a patient with professional services (*see Bollino v Hitzig*, 2001 NY Slip Op 40593[U], *9-10, 2001 NY Misc LEXIS 1106, *12 [Sup Ct, Nassau County, Dec. 7, 2001] [office administrator and technician may not be held liable for failing to obtain patient's fully informed consent]; *cf. Spinosa v Weinstein*, 168 AD2d 32, 38 [2d Dept 1991] [surgical assistant may not be held liable for failing to obtain patient's fully informed consent]).

In her affirmation, Haliuk asserted that she was not a healthcare professional and did not personally render medical care to the plaintiff, and, thus, had no legal obligation to inform the plaintiff of the risks and benefits of, or alternatives to, the injection procedures. Haliuk supported her allegation with a computer printout from the New York State Department of Education's professional registration lookup web page, which, upon a search of registrations for all professions, reported no matches for her name. Although, as explained above, this printout did not constitute "documentary evidence" within the meaning of CPLR 3211(a)(1), it was retrieved from a governmental website and, thus, it nonetheless is relevant to and admissible in connection with a CPLR 3211(a)(7) motion (*see Matter of LaSonde v Seabrook*, 89 AD3d 132, 137 n 8 [1st Dept 2011]; *Kingsbrook Jewish Med. Ctr. v Allstate Ins. Co.*, 61 AD3d 13, 19-20 [2d Dept 2009]; *see also Herman v 36 Gramercy Park Realty Assocs.*, 2017 NY Slip Op 30385{U} [Sup Ct, N.Y. County, Apr. 21, 2017]; *U.S. Bank Natl. Assn. v Martinez*, 54 Misc 3d 1209[A], 2016 NY Slip Op 51584[U] [Sup Ct, Kings County, Oct. 31, 2016]; *141 Sunnyside, LLC v M.*

Zoarez, Inc., 41 Misc 3d 1224[A}, 2013 NY Slip Op 51826[U] [Sup Ct, Kings County, Nov. 1, 2013]), particularly because Haliuk confirmed the veracity of the results of the search in her own affirmation. In opposition to Haliuk's prima facie showing that the Public Health Law did not obligate her independently to obtain the plaintiff's fully informed consent to the subject procedure, the plaintiff failed to refute that showing with any evidence, and failed to present any persuasive legal authority for her contention that nonprofessionals are obligated to obtain a patient's informed consent. Hence, that branch of Haliuk's motion seeking to dismiss the lack of informed consent cause of action insofar as asserted against her for failure to state a cause of action must be granted.

The elements of a cause of action to recover damages for battery are intentional bodily contact that is offensive in nature (*see Timothy Mc. v Beacon City Sch. Dist.*, 127 AD3d 826, 829 [2d Dept 2015]; *Cerilli v Kezis*, 16 AD3d 363, 364 [2d Dept 2005]). A doctor who threatens to perform, and thereafter actually performs, a medical or diagnostic procedure on a patient *without any consent*, in the absence of an emergency, is liable for battery (*see VanBrocklen v Erie County Med. Ctr.*, 96 AD3d 1394, 1394-1395 [4th Dept 2012]; *Cerilli v Kezis*, 16 AD3d at 363-364; *Laskowitz v CIBA Vision Corp.*, 215 AD2d 25, 28 [2d Dept 1995]; *Rigie v Goldman*, 148 AD2d 23, 28 [2d Dept 1989]; *Oates v New York Hosp.*, 131 AD2d 368, 369 [1st Dept 1987]), although a healthcare provider may be held liable for both battery and medical malpractice where he or she performed invasive procedures on a plaintiff, despite his or her emphatic refusal to consent thereto (*see Oates v New York Hosp.*, 131 AD2d at 369). Haliuk established that she had no bodily contact with the plaintiff, since Haliuk merely retrieved the dermal fillers from storage and presented them to Itskovich. Although Itskovich conceded that he administered the injections to the plaintiff, both he and Haliuk asserted that the plaintiff consented to injections of Botox and dermal fillers. The plaintiff did not deny that she consented to the injections per se, but asserted only that she did not consent to subject herself to an injection with expired fillers via an unsterilized syringe. Accepting the plaintiff's allegations as

true for the purposes of the defendants' motions, she failed to show that she has a cause of action against Haliuk and Itskovich to recover for battery. Rather, the court concludes that, even had Haliuk retrieved expired filler and provided it to Itskovich, and Itskovich administered it with an unsterilized syringe, the allegations would only constitute medical malpractice on Itskovich's part, and would be the equivalent of administering a non-indicated medication (*see generally Brooks v April*, 31 NY3d 1102, 1103 [2018], *reversing* 154 AD3d 564 [1st Dept 2017] [determining that plaintiff raised triable issues of fact in opposition to defendant's prima facie showing of entitlement to judgment as a matter of law in medical malpractice action where plaintiff alleged, among other things, that defendant administered contraindicated medication (*see Brooks v April*, 154 AD3d at 570 [Moskowitz, J., dissenting])]). Hence, the court grants those branches of the individual defendants' motions which were to dismiss the battery cause of action insofar as asserted against each of them.

The essential elements of a cause of action to recover for fraud in the inducement are "'representation of a material existing fact, falsity, scienter, deception and injury'" (*New York Univ. v Continental Ins. Co*., 87 NY2d 308, 318 [1995], quoting *Channel Master Corp. v Aluminium Ltd. Sales Corp*., 4 NY2d 403, 407 [1958]). "At the very threshold, then, plaintiff must allege a misrepresentation or material omission by defendant, on which [she] relied, that induced plaintiff" to undergo the subject procedure (*New York Univ. v Continental Ins. Co*., 87 NY2d at 318). The plaintiff made no such allegations here. Rather, the only allegations in the complaint that suggested that the defendants may have engaged in some type of fraudulent behavior were conclusory statements that "Haliuk misrepresented the medical treatment, the expiration status of the products, and proposed false billing practices to induce Plaintiff to act." A complaint alleging a cause of action sounding in fraud must sufficiently detail the allegedly fraudulent conduct (*see* CPLR 3016; *Pludeman v Northern Leasing Sys., Inc.,* 10 NY3d 486, 491-492 [2008]), and, although that pleading requirement "should not be confused with unassailable proof of fraud" (*Pludeman v Northern Leasing Sys., Inc.,* 10 NY3d at 492; *see*

Sargiss v Magarelli, 12 NY3d 527, 530-531 [2009]), the plaintiff has submitted no admissible proof whatsoever that either of the individual defendants made specific representations that were not true. The factual allegations in the complaint, set forth in paragraphs 1 through 3 and 6 through 14, undercut the plaintiff's contentions, since she conceded that Itskovich correctly represented the nature of the medical treatment, that is, that the treatment consisted of subdermal injections of Botox and dermal fillers; the crux of her complaint is that he performed the procedure with defective substances and equipment. Nor did the plaintiff specifically allege that she asked Haliuk whether the dermal filler was expired or unexpired, or that Haliuk knowingly and explicitly represented that the dermal filler was unexpired. Rather, the gravamen of her complaint is that Haliuk retrieved expired dermal filler from storage and provided it to Itskovich without either of the two individual defendants informing the plaintiff of the expiration date. If that were indeed the case, the claim sounds only in medical malpractice, not fraud. To the extent that the plaintiff has premised her fraud cause of action on Haliuk's allegedly fraudulent billing, she made no allegation other than that Haliuk "offered" to falsely classify the services that were rendered as "vein treatment" for tax-deduction purposes, not that Haliuk actually did so; moreover, the plaintiff made no allegations as to how such an intentional misclassification of services caused or contributed to any of her injuries. Hence, those branches of the individual defendants' motions which were to dismiss the fraud cause of action insofar as asserted against each of them must be granted.

With respect to the cause of action to recover for negligent infliction of emotional distress

> "[i]t is well-settled that a person 'to whom a duty of care is owed . . . may recover for harm sustained solely as a result of an initial, negligently-caused psychological trauma, but with ensuing psychic harm with residual physical manifestations' (*Johnson v State of New York,* 37 NY2d 378, 381 [1975] [citations omitted]). A breach of the duty of care 'resulting directly in emotional harm is compensable even though no physical injury occurred' (*Kennedy v McKesson Co.*, 58 NY2d 500, 504 [1983]) when the mental injury is 'a direct, rather than a consequential, result of the breach' (*id*. at 506) and when the claim possesses 'some guarantee of genuineness' (*Ferrara v Galluchio*, 5 NY2d 16, 21 [1958])"

(*Ornstein v New York City Health & Hosps. Corp.*, 10 NY3d 1, 6 [2008]). "A cause of action for negligent infliction of emotional distress generally requires [the] plaintiff to show a breach of duty owed to [him or] her which unreasonably endangered [his or] her physical safety, or caused [him or] her to fear for [his or] her own safety" (*A.M.P. v Benjamin*, 201 AD3d 50, 57 [2d Dept 2021] [citations and internal quotation marks omitted]; *see Schultes v Kane*, 50 AD3d 1277, 1278 [3d Dept 2008]). Although a cause of action sounding in negligent infliction of emotional distress does not require proof of extreme and outrageous conduct (*see Brown v New York Design Ctr., Inc.,* 215 AD3d 1, 7 [1st Dept 2023]; *Doe v Langer*, 206 AD3d 1325, 1331 [3d Dept 2022]; *Stephanie L. v House of Good Shepherd*, 186 AD3d 1009, 1014 [4th Dept 2020]; *Taggart v Costabile*, 131 AD3d 243, 255 [2d Dept 2015]), such a claim usually cannot be asserted where, as here, it is essentially duplicative of other tort causes of action (*see Aykac v City of New York,* 2022 NY Slip Op 33639[U], *16, 2022 NY Misc LEXIS 10629, *25 [Sup Ct, N.Y. County, Oct. 20, 2022] [Kelley, J.]; *C.T. v Valley Stream Union Free Sch. Dist.*, 201 F Supp 3d 307, 327-328 [ED NY 2016]).

The tort of intentional infliction of emotional distress "has four elements: (i) extreme and outrageous conduct; (ii) intent to cause, or disregard of a substantial probability of causing, severe emotional distress; (iii) a causal connection between the conduct and injury; and (iv) severe emotional distress" (*Howell v New York Post Co.*, 81 NY2d 115, 121 [1993]). Similarly, that cause of action must be dismissed as duplicative of other causes of action. The claim here "fall[s] within the ambit of other traditional tort liability" (*see Fleischer v NYP Holdings, Inc.*, 104 AD3d 536, 538 [1st Dept 2013]; *see also Fischer v Maloney*, 43 NY2d 553, 557-558 [1978]; *Matthaus v Hadjedj*, 148 AD3d 425, 426 [1st Dept 2017]; *Rodgers v City of New York*, 106 AD3d 1068, 1070 [2d Dept 2013]; *Leonard v Reinhardt*, 20 AD3d 510, 510 [2d Dept 2005]; *Stuart v Porcello*, 193 AD2d 311, 315 [3d Dept 1993]), specifically, the medical malpractice cause of action (*see Fleischer v Zhang*, 228 AD3d 484, 485 [1st Dept 2024]). Additionally, the plaintiff did not allege any facts independent of those alleged in connection with those other

claims, or allege distinct damages (*see Matthaus v Hadjedj*, 148 AD3d at 426; *Perez v Violence Intervention Program*, 116 AD3d 601, 602 [1st Dept 2014]; *Fleischer v NYP Holdings*, 104 AD3d at 538). In any event, the cause of action sounding in intentional infliction of emotion distress requires allegations that the defendants' conduct was "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community" (*Sheila C. v Povich*, 11 AD3d 120, 130-131 [1st Dept 2004] [internal quotation marks omitted], citing, inter alia, *Dillon v City of New York*, 261 AD2d 34, 41 [1st Dept 1999]; *see Stauber v New York City Tr. Auth*., 10 AD3d 280, 281-282, 781 NYS2d 26 [1st Dept 2004]; *see also Brown v New York Design Ctr., Inc.,* 215 AD3d at 7-8). The factual allegations set forth in the complaint do not meet this standard.

Consequently, those branches of the individual defendants' motions which were to dismiss the negligent and intentional infliction of emotional distress causes of action must be granted.

The plaintiff's motion seeking to compel the defendants to preserve and produce any video surveillance footage that purportedly recorded a process server hand-delivering a copy of the summons and complaint to a woman in Itskovich's office (MOT SEQ 003) must be denied as academic since, upon the dismissal of the complaint insofar as asserted against Haliuk for failure to state a cause of action, there no longer is any need for the plaintiff to obtain such a video to establish that Haliuk was properly served with process.

The plaintiff's motion seeking to compel the defendants to produce documents and items of discovery referable to the jural and legal status of the Clinic (MOT SEQ 004) must be denied, inasmuch as the plaintiff failed to establish that she satisfied a condition precedent to the submission of the motion, as set forth in 22 NYCRR 202.20-f(b), which requires that she attest to "having conducted an in-person or telephonic conference, setting forth the date and time of such conference, persons participating, and the length of time of the conference." In any event, since "a preliminary conference has not been held" (22 NYCRR 202.8[f]), the appropriate

remedy for Itskovich's and the Clinic's alleged failure to provide disclosure at this juncture is for the court to schedule a preliminary conference (*see id.*; *Westchester Med. Ctr. v Amoroso*, 110 AD3d 580, 580 [1st Dept 2013]), or to direct the parties to submit a proposed preliminary conference order after issue has been joined by the service of an answer.

Accordingly, it is,

ORDERED that the motion of the defendant the defendant Anna Haliuk, individually and/or in her capacity as an office manager of the Brooklyn Aesthetics Boris Itskovich Clinic, to dismiss the complaint insofar as asserted against her (MOTION SEQUENCE 001) is granted, and the complaint is dismissed insofar as asserted against the defendant Anna Haliuk, individually and/or in her capacity as an office manager of the Brooklyn Aesthetics Boris Itskovich Clinic; and it is further,

ORDERED that, on the court's own motion, the action is severed against the defendant Anna Haliuk, individually and/or in her capacity as an office manager of the Brooklyn Aesthetics Boris Itskovich Clinic; and it is further,

ORDERED that the Clerk of the court shall enter judgment dismissing the complaint insofar as asserted against the defendant Anna Haliuk, individually and/or in her capacity as an office manager of the Brooklyn Aesthetics Boris Itskovich Clinic; and it is further,

ORDERED that the motion of the defendant Boris Itskovich, M.D., individually and/or doing business as Brooklyn Aesthetics Boris Itskovich Clinic, to dismiss the battery, fraud, and negligent and intentional infliction of emotional distress causes of action insofar as asserted against him (MOTION SEQUENCE 002) is granted, and the battery, fraud, and negligent and intentional infliction of emotional distress causes of action are dismissed insofar as asserted against the defendant Boris Itskovich, M.D., individually and/or doing business as Brooklyn Aesthetics Boris Itskovich Clinic; and it is further,

ORDERED that the plaintiff's motion to compel the defendants to preserve and produce any video surveillance footage that purportedly recorded a process server hand-delivering a

copy of the summons and complaint in this action on June 30, 2025 to a woman in the defendants' office, located at 2993/3003 Ocean Parkway, Brooklyn, New York (MOTION SEQUENCE 003), is denied as academic; and it is further,

ORDERED that the plaintiff's motion to compel the defendants to produce documents and items of discovery referable to the jural and legal status of Brooklyn Aesthetics Boris Itskovich Clinic (MOTION SEQUENCE 004) is denied.

This constitutes the Decision and Order of the court.

12/12/2025
DATE

JOHN J. KELLEY, J.S.C.

MOTION 001:		CASE DISPOSED			X	NON-FINAL DISPOSITION		
	X	GRANTED		DENIED		GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT		REFERENCE
MOTION 002:		CASE DISPOSED			X	NON-FINAL DISPOSITION		
	X	GRANTED		DENIED		GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT		REFERENCE
MOTION 003:		CASE DISPOSED			X	NON-FINAL DISPOSITION		
		GRANTED	X	DENIED		GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT		REFERENCE
MOTION 004:		CASE DISPOSED			X	NON-FINAL DISPOSITION		
		GRANTED	X	DENIED		GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT		REFERENCE