

Gaughan v Barounis

2025 NY Slip Op 34836(U)

December 8, 2025

Supreme Court, New York County

Docket Number: Index No. 154203/2024

Judge: Ariel D. Chesler

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

PRESENT: HON. ARIEL D. CHESLER PART 62M

Justice

-----X
AYLIN GAUGHAN, INDEX NO. 154203/2024
Plaintiff, MOTION DATE 07/24/2025,
 MOTION SEQ. NO. 002 003
 MOTION DATE 07/10/2025
- v -

STEPHEN G BAROUNIS, CITY OF NEW YORK,
KATHERINE VIERA, WGCZ, S.R.O., STEPHANE MICHAEL
PACAUD, MALORIE DEBORAH PACAUD, JOHN AND
JANE DOES 1-50,

**DECISION + ORDER ON
MOTION**

Defendant.

-----X
The following e-filed documents, listed by NYSCEF document number (Motion 002) 38, 39, 40, 41, 42,
49, 50, 51, 52, 53, 54, 55, 56, 57

were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 61, 62, 63, 64, 65,
66, 67, 68, 69, 70, 71, 72, 73, 74, 75

were read on this motion to/for JUDGMENT - DEFAULT.

Defendants WGCZ, S.R.O., now known as WebGroup Czech Republic (“WGCZ”),
Stephanie Michael Pacaud, and Malorie Deborah Pacaud (the “Pacauds”) (collectively WGCZ
and the Pacaudsto be referred to as, “XVideo defendants”) move for an Order pursuant to CPLR
3211 (a)(7)-(8) and 47 U.S.C. § 230(c)(1)(e)(3), dismissing the Complaint on the grounds that
(1) there is no personal jurisdiction; (2) they are entitled to immunity under Section 230 of the
Communications Decency Act (“Section 230” or “CDA”); and (3) the Complaint fails to plead
any claim for relief which can be granted (motion sequence 002).

Plaintiff moves for an Order (1) pursuant to CPLR 3216 striking the City’s Answer; (2)
granting plaintiff a default judgment against the City; and/or (3) granting plaintiff summary
judgment against the City (motion sequence 003)

The City cross-moves for an Order (1) pursuant to CPLR 3025(a) dismissing plaintiff's Second Amended Complaint in its entirety because it was filed without leave of Court; (2) denying plaintiff's motion for default judgment and summary judgment; and (3) alternatively, compelling plaintiff to accept service of the City's Answer as timely served *nunc pro tunc* (motion sequence 003).

BACKGROUND

Plaintiff, *Pro Se*, filed a Summons and Complaint on May 2, 2024 (*see* NYSCEF Doc. No. 1). Plaintiff then filed an Affidavit of Service on May 22, 2024, indicating service was effected on defendants Stephen G. Barounis and Katherine Viera (*see* NYSCEF Doc. No. 2). Plaintiff then filed an Amended Complaint on May 26, 2024 (*see* NYSCEF Doc. No. 3). On May 30, 2024, plaintiff filed a Second Amended Complaint (*see* NYSCEF Doc. No. 6)¹. On August 3, 2024, a Notice of Removal to Federal Court was filed by the XVideo defendants. On October 16, 2024, a Notice of Remand was filed by the XVideo defendants.

In sum and substance, plaintiff's Complaint alleges that she is a New York resident who has been harassed by her stepson, defendant Barounis, and the woman who Barounis is dating or has married, Veira by, among other things, creating a profile on XVideos.com (an adult entertainment website) and impersonating plaintiff as retaliation for plaintiff's husband no longer financially supporting them (*see* NYSCEF Doc. No. 6, ¶¶ 1, 33, 113-14, 163). The Complaint alleges that, among other harassing behavior, Barounis and Viera downloaded photos of plaintiff from her social media profiles, superimposed her face on other, separate images of women

¹ The three Complaints were filed within a month, and given the short timeline, the fact that plaintiff is *Pro Se*, and since the only substantive change between the two pleadings appears to be one additional allegation reflected in Paragraph 125 of the Second Amended Complaint identifying the username of the profile at issue, the Court is accepting the filing of the Second Amendment Complaint and is reviewing all the claims made in that Complaint for the purposes of the motions being decided herein.

engaging in sexual conduct, and posted the photos they digitally created, along with plaintiff's name, address, and phone number, on the XVideos.com profile they created (*id.* at ¶¶ 210-13). The Complaint alleges various claims against Barounis and Viera for allegedly creating the XVideos.com profile impersonating plaintiff (*id.* at ¶¶ 94-165).

The Complaint also asserts claims against the XVideo defendants (*id.* at ¶¶ 167-184, 217-230). The Complaint alleges “defendant WGCZ, S.R.O. (“WGCZ”) is a corporation, organized and existing under the laws of Czech Republic with its principal office in Downers Grove, Illinois and perhaps elsewhere” and “defendant WGCZ, S.R.O., upon information and belief, is a limited liability company existing under the laws of Czech Republic and having a place of business at Phara 1- Nove Mesto, Krakovska 1366/25, PSC 110 00 Czech Republic (*id.* at ¶¶ 21-22). Plaintiff alleges that “defendant, WGCZ S.R.O., owns and operates ‘XVideo.com’” (*id.* at ¶ 23). The Complaint also claims that “defendant Stephane Michael Pacaud is, upon information and belief, is resident of France, and an executive of WGCZ, S.R.O., acting within the United States and seeking protection of the laws if the United States” (*id.* at ¶ 24). The Complaint additionally claims that “defendant Malorie Deborah Pacaud is, upon information and belief, is a resident of France, and an executive of WGCZ, S.R.O., acting within the United States and seeking protection of the laws of the United States” (*id.* at ¶ 25). Plaintiff contends that “defendant Stephane Michael Pacaud and Malorie Deborah Pacaud are each executives of defendant, WGCZ, S.R.O., with discretion influence, and control over the contents of XVideos.com...” (*id.* at ¶ 26).

DISCUSSION

I. The XVideo Defendants’ Motion to Dismiss (Motion Sequence 002)

A. *Standard on the Motion*

CPLR 3211 (a)(7) states that "[a] party may move for judgment dismissing one or more causes of action asserted against him on the ground that...the pleading fails to state a cause of action." While "plaintiffs' allegations are presumed to be true and accorded every favorable inference, 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]).

CPLR 3211 (a)(8) provides that "a party may move for judgment dismissing one or more causes of action on the ground that the court has not jurisdiction over the defendant." "On a motion to dismiss pursuant to CPLR 3211 (a)(8), the plaintiff has the burden of presenting sufficient evidence, through affidavits and relevant documents, to demonstrate jurisdiction" (*Coast to Coast Energy, Inc. v. Gasarch*, 149 A.D.3d 485, 486-487 [1st Dept 2017]). "The plaintiff need only make a prima facie showing that the defendant was subject to the personal jurisdiction of the Court" (*Leuthner v. Homewood Suites by Hilton*, 151 AD3d 1042, 1043 [2d Dept 2017]).

B. General Jurisdiction

In support of their dismissal motion, the XVideo defendants first argue that the Complaint should be dismissed because the Court lacks personal jurisdiction over them. Specifically, they claim that general jurisdiction is lacking because the Complaint pleads no facts that could confer general jurisdiction over them. They contend that WGCZ's place of incorporation and principal place of business are not New York, and WGCZ conducts no business in New York. The XVideo defendants state that the Complaint alleges that WGCZ is incorporated in the Czech Republic, its principal office is in "Illinois and perhaps elsewhere," and it has a principal place of business in Czech Republic. However, the XVideo defendants

assert that WGCZ does not have an office in the State of Illinois or elsewhere in the United States, let alone New York, and is not registered to do business in Illinois or elsewhere in the United States, let alone New York². As such, the XVideo defendants argue that the Complaint, in alleging that both the place of incorporation and principal place of business are not in New York, affirmatively pleads facts demonstrating the lack of general jurisdiction over WGCZ in New York.

Furthermore, the XVideo defendants argue that the Complaint also alleges no facts showing that WGCZ has continuous and systematic affiliations with New York (*see* NYSCEF Doc. No. 6) nor could the Complaint be amended to make such a showing. The XVideo defendants avow that: WGCZ does not have an office in New York and is not registered to do business in New York; WGCZ has no New-York based operations; has no New York employees; owns no New York property; rents no New York property; pays no New York taxes; does not hold any New York bank accounts; has no New York mailing addresses or phone numbers; and does not have any designated agents residing in, domiciled in, or doing business from New York (*see* NYSCEF Doc. No. 39). WGCZ also argues that it does not sell products or provide any services that are intentionally aimed or directed at New York, none of its officers or directors reside or are domiciled in New York, and it does not direct any advertising for its business to New York (*id.*). As such, they claim that because WGCZ's place of incorporation and principal place of business are not New York, and WGCZ conducts no business in New York, the Court lacks general jurisdiction of WGCZ.

On a similar note, the XVideo defendants argue the Pacauds are not domiciled in New York, nor have never resided in New York, and they never consented to jurisdiction in New

² WGCZ contends that its principal place of business is in the Czech Republic (*see* NYSCEF Doc. No. 39).

York (*see* NYSCEF Doc. Nos. 40,41). The XVideo defendants also argue that the Complaint does not allege that the Pacauds were “doing business” in New York personally and not on behalf of WGCZ. Moreover, the XVideo defendants assert that the Pacauds, in fact, do not and have never conducted personal business in New York (*see* NYSCEF Doc. Nos. 40,41). The XVideo defendants highlight the fact the Complaint contains no allegation of any conduct allegedly perpetrated by the Pacauds, but merely alleges that the Pacauds are residents of France and, “as WGCZ executives”, act within the United States, seek protection of the laws of the United States, and exercise general control over the website at issue in this action (*see* NYSCEF Doc. Nos. 3,6). The XVideo defendants assert that merely being executives of WGCZ is not a basis for personal jurisdiction.

Further, they claim that even assuming that the allegations in the Complaint about the Pacauds being executives of WGCZ could support personal jurisdiction over them: (1) the Complaint’s allegations about the Pacaud’s roles as WGCZ executives refer to alleged conduct in the United States, not New York; and (2) WGCZ’s place of incorporation and principal place of business are not New York and WGCZ conducts no business in New York (*see* NYSCEF Doc. No. 39). Therefore, the Xvideo defendants contend that since the Court lacks general jurisdiction over WGCZ, this excludes any attempt to establish jurisdiction over the Pacauds based on their alleged roles as executives of WGCZ.

In opposition³, plaintiff argues that WGCZ conducts business in the United States and New York. Plaintiff expands upon this by arguing that in operating its website, WGCZ, headquartered in the Czech Republic, uses the services of several U.S.-based companies.

³ Defendants WGCZ and the Pacauds contend that plaintiff has abandoned her claims against the Pacauds, as she ignores that ground for dismissal in her Affirmation in Opposition (*see* NYSCEF Doc. No. 57, p. 2-3). However, it is not clear to the Court whether plaintiff is asserting the arguments in her opposition against WGCZ alone or the Pacauds too, so the Court will apply the arguments plaintiff raises as to all XVideo defendants.

Specifically, plaintiff asserts that the WGCZ contracts with Google and Twillio to manage emails, and they contract with PayPal and EPOCH to manage payments in US dollars to and from their users and advertisers. Plaintiff further submits that WGCZ also owns several U.S. based companies/subsidiaries to host adult entertainment in the U.S. market. Plaintiff states that a yahoo search showed that XVideo.com is in the top ten list of the adult entertainment market in the United States. Plaintiff also argues that previous lawsuits against WGCZ were/ are being litigated within the U.S., so the nexus between the federal court actions is enough jurisdiction via the long arm statute. Moreover, plaintiff contests that at the very least dismissal is premature until such time that discovery is exchanged in order for jurisdiction to be determined. In addition, plaintiff maintains that WGCZ clearly does business in New York with its use of U.S. based corporations and U.S. trademarks (*see* NYSCEF Doc. No. 55).

Plaintiff also submits that on August 3, 2024, counsel for the XVideo defendants appeared in this action by filing a Notice of Removal (*see* NYSCEF Doc. No. 35), and as such the XVideo defendants voluntarily came into this action. Plaintiff notes that the XVideo did not motion this court for dismissal and instead sought for this action to be litigated in the federal courts. Therefore, plaintiff argues that by appearing, the Xvideo defendants waived their right to motion this Court for dismissal.⁴

CPLR 302(a)(1) provides: “Personal jurisdiction over a non-domiciliary exists when that individual, or their agent...transacts any business within the state or contracts anywhere to supply goods or services in the state.” “A foreign corporation is amenable to suit in New York courts under CPLR 301 if it has engaged in such a continuous and systematic course of ‘doing

⁴ The Court finds this argument unavailing, and as such, does not address it further (*Benefits By Design Corp. v. Contractor Mgmt. Servs., LLC*, 75 AD3d 826, 828 [3d Dept 2010] “Supreme Court properly found that defendant did not submit itself to New York jurisdiction by removing the action to federal court. Defendant's notice of removal explicitly provided that the removal did not waive any available defenses or counterclaims”).

business' here that a finding of its 'presence' in this jurisdiction is warranted" *Landoil Res. Corp. v. Alexander & Alexander Servs., Inc.*, 77 NY2d 28, 33 [1990] [internal citations omitted]). "The test for doing business is a simple [and] pragmatic one: is the aggregate of the corporation's activities in the State such that it may be said to be 'present' in the State 'not occasionally or casually, but with a fair measure of permanence and continuity, and is the quality of the nature of the corporation's contacts with the State sufficient to make it reasonable and just according to traditional notions of fair play and substantial justice that it be required to defend the action here" (*Laufer v. Ostrow*, 55 NY2d 305, 309-310 [1982] [internal citations and quotations omitted]).

"Whether a corporation itself may be deemed to be present in the State with permanence and continuity is evaluated using a number of factors...including conducting business affairs in New York, and/or maintaining an office, bank accounts, property or employees in the state" (*Kahn v. Leo Schachter Diamonds, LLC*, 2019 N.Y. Slip. Op. 32280(U) at 5 [N.Y. Cty. Sup. Ct. 2013], citing *Landoil Resources Corp. v. Alexander & Alexander Servs., Inc.*, 77 NY2d 28, 33 [1990]; *Frummer v. Hilton Hotels International, Inc.*, 19 NY2d 533, 537 [1967]). "Solicitation of business alone will not justify a finding of corporate presence in New York with respect to a foreign manufacturer or purveyor of services, but when there are activities of substance in addition to solicitation there is presence and, therefore, jurisdiction" (*id.* [internal citations omitted]).

As an initial matter, the Complaint fails to allege that the XVideo defendants are subject to jurisdiction pursuant to CPLR 301 (*Teplin v. Manafort*, 81 AD2d 531, 531 [1st Dept 1981] ["A plaintiff who seeks to invoke *in personam* jurisdiction of this Court with respect to a non-resident defendant must expressly allege in the complaint facts bringing the non-resident within

Sections 301 and 302 of the CPLR. Since such allegations were lacking, the complaint was properly dismissed”]).

Nonetheless, the XVideo defendants established that they are not subject to personal jurisdiction in New York Under CPLR § 301. The XVideo defendants point to the affirmation of Robert Seifert, director at WGCZ, wherein he affirms that WGCZ is a business entity organized under the laws of the Czech Republic with its principal place of business in Prague, Czech Republic and WGCZ has never had an office, headquarters, or any physical presence in Illinois, New York or elsewhere in the U.S., and rather, WGCZ’s offices are located in Prague, Czech Republic. Moreover, Mr. Seifert states “WGCZ has no New York based business operations, no New York employees, owns no New York property, rents no New York property, and pays no New York state taxes. WGCZ does not hold any New York bank accounts, has no New York mailing address or phone numbers, and does not have any designated agents residing in, domiciled in, or doing business from New York. WGCZ also does not sell products or provide any services intentionally directed or aimed at New York. None of WGCZ’s officers or directors reside in or are domiciled in New York” (*see* NYSCEF Doc. No. 39).

The fact that WGCZ hosts a website, XVideos.com, that is accessible to persons in New York (and around the world), is not sufficient to establish personal jurisdiction under CPLR 301 (*see The Tax Club, Inc. v. Precision Corporate Services*, 114278/2010 2011 WL 5295039 [Sup Ct, N.Y. County 2011] [“Plaintiff’s argument that there is personal jurisdiction over defendants under “doing business test” provided by CPLR 301 based on...interactive website and their revenue from New York customers is unavailing”]; *Harber v. Studium, Inc.*, 22 Misc.3d 1129(A) [Sup Ct, NY County 2009] [internal citations omitted] [“It has been repeatedly held that the fact that a foreign corporation has a website accessible to New York is insufficient to confer

jurisdiction under CPLR § 301]; *Parsons v. Kal Kan Food, Inc.*, 68 AD3d 1501, 1502 [3d Dept 2009] [“Defendant is not subject to personal jurisdiction in New York under CPLR 301...Defendant is a New Jersey Corporation not registered to do business in New York, it neither owns nor leases any real or personal property here, pays no New York taxes and none of its corporate officers reside in that state. Defendant’s principal place of business is in New Jersey...Although defendant mailed brochures to customers in New York and its Web site was accessible worldwide, mere solicitation of business in New York is insufficient to constitute doing business here”]; [internal citations omitted]; *see also Cragnotti and Partners Capital Inv. - Brazil S.A. v. Quintella*, 2017 WL 728754 [Sup Ct N.Y. County 2017] [“The fact that a website is interactive does not, in and of itself, support jurisdiction under CPLR 301(a)(1) because the ‘constitutional underpinnings of the New York long-arm statute...require something more’” [internal citations omitted]].

The XVideo defendants also rely upon the Affirmation of Stephane Michael Pacaud, shareholder and executive of WGCZ, wherein he affirms that he is a tax resident of the Czech Republic and has lived in the Czech Republic and never resided in the U.S (*see* NYSCEF Doc. No. 40). He also states in his affirmation that he does not own/rent any property in the U.S., does not pay any U.S taxes, does not hold any U.S. bank accounts, has no U.S. mailing address or phone numbers, and does not conduct/has never conducted any business in New York or any state/territory in the U.S (*id.*). The XVideo defendants additionally point to the Affirmation of Malorie Deborah Pacaud, wherein she affirms that she is a citizen of France and resides in France, and has never been a citizen of the U.S., nor resided in the U.S. (*see* NYSCEF Doc. No. 41). She also affirms that she does not rent/own any property in the U.S., pay any U.S. taxes, hold any U.S. bank accounts, has no U.S. mailing address or phone numbers, and does not

conduct/has never *conducted* business in New York or any state/territory in the U.S. (*id.*). Ms. Pacaud also affirms that she was formerly an executive of WGCZ until August 31, 2021, and since then has not held any officer, executive, or other position at the company (*id.*).

Correspondingly, this is not sufficient to establish personal jurisdiction for the Pacaud defendants pursuant to CPLR § 301 (*Laufer*, 55 NY2d at 313 [“Although a corporation can act only through an employee or agent, the employee or agent being a live rather than a fictional being can act on behalf of himself or his employer or principal. He does not subject himself, individually, to the CPLR 301 jurisdiction of our courts, however, unless he is doing business in our state individually]; *IMAX Corp. v. The Essel Group*, 154 AD3d 464, 465-466 [1st Dept 2017] [Holding petitioner failed to establish that New York Courts have jurisdiction pursuant to CPLR 301 because “movant failed to show either...domicile in New York or that...contacts with New York were so extensive as to support general jurisdiction...further, the evidence submitted by petitioner demonstrates that...business activities in New York were undertaken on behalf of a corporate entity”]).

Thus, the XVideo defendants cannot be subject to personal jurisdiction in New York unless plaintiff can show that New York's long-arm statute confers jurisdiction over defendants.

C. Specific Jurisdiction

The Court finds that the XVideo defendants have established that there is no jurisdiction over them under CPLR 302(a)(1). To determine whether a non-domiciliary may be sued in New York, courts must first determine whether New York's long-arm statute, CPLR § 302, confers jurisdiction over it based on contacts with this state (*LaMarca v. Pak-Mor Mfg. Co.*, 95 NY2d 210, 214 [2000]). If any of the provisions of CPLR § 302 apply, next, courts must determine whether the exercise of jurisdiction comports with due process (*id.*). CPLR § 302 (a)(1) provides:

“a court may exercise personal jurisdiction over any non-domiciliary...who in person or through an agent...transacts any business within the state or contracts anywhere to supply goods or services in the state.” “Whether a non-domiciliary is transacting business within the meaning of CPLR 302 (a)(1) is a fact based determination, and requires a finding that the non-domiciliary’s activities were purposeful and established ‘a substantial relationship between the transaction and the claim asserted’” (*Paterno v. Laser Spine Institute*, 24 NY3d 370, 375 [2014]). “Purposeful activities are volitional acts by which the non-domiciliary avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws” (*id.* [internal citations and quotations omitted]). “More than limited contacts are required for purposeful activities sufficient to establish that the non-domiciliary transacted business in New York” (*id.*).

“Because websites are ‘generally speaking, equally accessible everywhere,’ the mere availability of the site to users in New York, standing alone, does not amount to transacting business in the state for purposes of section 302(a)” (*Royalty Network Inc. v. Dishant.com, LLC*, 638 F.Supp.2d 410, 418 [S.D.N.Y. 2009] [internal citations omitted]). In deciding the issue of whether an internet website standing alone is sufficient to confer jurisdiction, courts typically look at the nature of the website. “At one end of the spectrum are situations where the defendant clearly does business over the Internet. If the defendant enters into contracts with residents of a foreign jurisdiction that involve the knowing and repeated transmission of computer files over the Internet, personal jurisdiction is proper. At the opposite end are situations where a defendant simply posted information on an Internet Web Site which is accessible to users in foreign jurisdictions. A passive Web site that does little more than make information available to those who are interested in it is not grounds for the exercise [of] personal jurisdiction. The middle

ground is occupied by interactive Web sites where a user can exchange information with the host computer. In these cases, the exercise of jurisdiction is determined by examining the level of interactivity and commercial nature of the exchange of information that occurs on the Web site” (*Best Van Lines, Inc. v. Walker*, 490 F.3d 239, 251 [2nd Cir 2007] [internal citations omitted]).

Here, even assuming that XVideo.com can be classified as either “middle ground” or “interactive,” the XVideo defendants have also demonstrated that they would still not be subject to jurisdiction because they have not purposefully directed its activity in a substantial way to the forum state (*Deer Consumer Products, Inc. v. Little*, 35 Misc.3d 374, 386 [Sup. Ct., NY County 2012] [“Regardless of the interactivity level ...there is no indication that...postings on these websites, where are merely accessible to anyone- in New York and in the entire world- were expressly targeted at *anyone* in New York”]; *A.W.L.I. Grp., Inc. v. Amber Freight Shipping Lines*, 828 F. Supp. 2d 557, 569 [E.D.N.Y. 2011] [“The fact that New Yorkers could view the website and therefore potentially transact business is not sufficient. It is undisputable that the website was also viewable by anyone throughout the world”]; (*Fanelli v. Latman*, 202 AD3d 758, 760 [2d Dept 2022] [“Here, the totality of the circumstances does not provide the plaintiffs with a basis for imposing long-arm jurisdiction...pursuant to CPLR 302(a)(1). The affidavits submitted on the subject motions establish that...advertises its services nationwide through a website that is not specifically directed toward New York residents or businesses”]; *Competitive Techs., Inc. v. Pross*, 14 Misc.3d 1224(A) [Sup.Ct. Suffolk County, 2007] [internal citations omitted][“[I]n order to exercise personal jurisdiction over a non-resident defendant, something more than the mere posting of information on a passive web site is required to indicate that the defendant purposefully directed his activities at the forum state”]). Nor does the Complaint

allege facts showing that they transact business within New York or contract anywhere to supply goods or services in New York. Accordingly, there can be no jurisdiction under CPLR 302(a)(1).

CPLR § 302 (a)(2) is also inapplicable to confer specific jurisdiction over WGCZ and the Pacauds in this instant matter as there is no allegation they were physically present in New York (*SOS Cap. v. Recycling Paper Partners of PA, LLC*, 220 AD3d 25, 36–37, [1st Dept 2023] [“New York courts, both state and federal, have consistently interpreted CPLR 302(a)(2) jurisdiction narrowly, and have held that to qualify under this subsection, a defendant’s act or omission must have occurred while defendant was physically present within the state”]).

CPLR 302 (a)(3)(i)-(ii) provides: “A court may exercise personal jurisdiction over any non-domiciliary...who in person or through an agent: commits a tortious act without the state causing injury to person or property within the state, except as a cause of action for defamation of character arising from the act, if he (i) regularly does or solicits business, or engages in any other course of conduct, or derives a substantial revenue from goods used or consumed or services rendered, in the state, or (ii) expects or should reasonably expect the act to have consequences in the state and derives substantial revenue from interstate or international commerce.”

“In short, text, precedent, and legislative intent all compel the conclusion that the substantial revenue clause of CPLR 302(a)(3)(i) requires evidence that the non-domiciliary not just derive revenue from New York State, but *intend* to derive revenue from this State” (*Williams v. Beemiller, Inc.*, 33 NY3d 523, 537, [2019]).

The conferral of jurisdiction under CPLR 302 (a)(3)(ii) “rests on five elements: First, that the defendant committed a tortious act outside the State; second, that the cause of action arises from the act; third, that the act caused injury to a person or property within the State; fourth, that

defendant expected or should reasonably have expected the act to have consequences in the State; and fifth, that defendant derived substantial revenue from interstate or international commerce” (*LaMarca v. Pak-Mor Mfg. Co.*, 95 NY2d 210, 214 [2000]). The fourth element, “is met when ‘[t]he nonresident tortfeasor * * * expect[s], or ha[s] reason to expect, that his or her tortious activity in another State will have direct consequences in New York’” (*id.* [internal citations omitted]). The fifth element “is designed to narrow ‘the long-arm reach to preclude the exercise of jurisdiction over nondomiciliaries who might cause direct, foreseeable injury within the State but ‘whose business operations are of a local character’” (*id.* at 215 [internal citations omitted]). “If these five elements are met, then a court must assess whether a finding of personal jurisdiction satisfies federal due process” (*Penguin Group (USA) Inc., v. American Buddha*, 16 NY3d 295, 302 [2011] [internal citations omitted]). “Due process is not satisfied unless a non-domiciliary has ‘minimum contacts’ with the forum State” (*LaMarca*, 95 NY2d at 216). “A non-domiciliary tortfeasor has ‘minimum contacts’ with the forum State—and may thus reasonably foresee the prospect of defending a suit there—if it ‘purposefully avails itself of the privilege of conducting activities within the forum State’” (*id.* [internal citations omitted]). “Minimum contacts alone do not satisfy due process” (*id.* at 217). “The prospect of defending a suit in the forum State must also comport with traditional notions of fair play and substantial justice (*id.* [internal citations and quotations omitted]).

As noted above, because the defamation exception applies, there is no personal jurisdiction pursuant to Section 302(a)(3). To the extent the complaint could be read as advancing other causes of action, the Court finds that there are insufficient allegations, let alone

factual basis to confer jurisdiction under either CPLR 302 (a)(3)(i), or CPLR 302 (a)(3)(ii) upon the XVideo defendants.⁵

C. Section 230 of the Communications Decency Act (CDA)

Alternatively, the XVideo defendants argue that plaintiff's claims against them should be dismissed pursuant to Section 230 of the CDA as it provides immunity to online service providers such that they cannot be liable for third-party content. The XVideo defendants stress that the Complaint alleges that the content at issue was created by defendants Viera and Barounis (*see* NYSCEF Doc. Nos. 3,6). The XVideo defendants argue that the Complaint has no allegations that they created the content at issue, as would be required to maintain a lawsuit over the protections of Section 230 (*see id.*).

In opposition, plaintiff argues that Section 230 does not apply to cases involving stolen identity, as it does not shield online platforms from liability for content that violates federal crimes, including identity theft. Therefore, plaintiff argues the XVideo defendants can be liable for defendants Barounis and Viera using the XVideo defendants' platform to commit identity theft which crimes were aided and furthered by the XVideo defendants. Plaintiff argues that Section 230 says nothing about a provider's own conduct beyond mere hosting. However, plaintiff alleges that the XVideo defendants did not just "host" the unlawful profile of plaintiff, but also encouraged traffic with key words/hashtags to direct traffic to plaintiff's profile to bring harm to plaintiff.

In addition, plaintiff argues the XVideo defendants allowed and encouraged criminal impersonation and dissemination of plaintiff's personal information to allow for harassment,

⁵ The Court additionally notes that defendants WGCZ and the Pacauds argue the Complaint fails to show specific jurisdiction pursuant to CPLR 302(a)(4). The Court agrees as the Complaint does not allege that WGCZ or the Pacauds own use or possesses any real property within New York (*see* NYSCEF Doc. Nos. 6, 39-41).

cyberstalking, cyberbullying, and revenge porn. Plaintiff also argues that the XVideo defendants are responsible for defamation based on the labels XVideo.com assigned to plaintiff's profile. Plaintiff further claims that the XVideo defendants are responsible for the creation of their platform to allow for solicitations even when its "criminal impersonation/identity theft, and are thus the "information content provider" as defined in Section 230(f)(3) (*see* NYSCEF Doc. No. 49, ¶ 167). Plaintiff also alleges that the XVideo defendants allowed Barounis/Viera to bypass the "verification" of plaintiff's identity. Plaintiff also asks the Court to take notice that the profile in question has plaintiff's personal information and physical information displayed (which plaintiff argues also generates interest/traffic), along with where to find her on social media, and her full name and phone number.

Plaintiff additionally argues that the XVideo defendants had a duty to remove defamatory /fraudulent in violation of plaintiff's privacy pursuant to NY State Civil Rights Law. Plaintiff goes on to assert that the XVideo defendants, while allegedly allowing Barounis and Viera to commit fraud and violate plaintiff's rights by marketing and bringing traffic to plaintiff's unlawful profile, violates NY General Business Law § 349 and 350.

Furthermore, plaintiff argues Section 230 includes a good faith requirement, and it is clear that the XVideo defendants undertook no good faith actions to restrict the unlawful account of plaintiff, even when plaintiff brought it to their attention (*see* NYSCEF Doc. No. 50). Plaintiff contends that immunity from Section 230 is lost because the XVideo defendants allowed the dissemination of plaintiff's personal information and allowed discriminatory content (age, sex, sexual orientation, ethnicity, etc.) (*see* NYSCEF Doc. No. 22).

Section 230 of the CDA provides: "[n]o provider or user or an interactive computer service shall be treated as the publisher or speaker of any information provided by another

information content provider” (47 U.S.C. § 230 [c][1]), and further provides “[n]o cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section (47 U.S.C. § 230 [e][3]). “Both state and federal courts around the country have generally interpreted Section 230 immunity broadly, so as to effectuate Congress’s policy choice...not to deter harmful online speech through the... route of imposing tort liability on companies that serve as intermediaries for other parties’ potentially injurious messages” (*Shiamili v. Real Estate Group of N.Y., Inc.*, 17 NY3d 281, 288 [2011] [internal citations omitted]; *see also Force v. Facebook*, 934 F3d 53, 64 [2nd Cir 2019] [“the Circuits are in general agreement that the text of Section 230 [c][1] should be construed broadly in favor of immunity”]).

The “national consensus” reads “Section 230 as generally immunizing Internet service providers from liability for third-party content wherever such liability depends on characterizing the provider as a ‘publisher or speaker’ of objectionable material (*Shiamili*, 17 NY3d at 288-289). Section 230 is also read to bar “lawsuits seeking to hold a service provider liable for its exercise of a publisher’s traditional editorial functions- such as deciding whether to publish, withdraw, postpone or alter content” (*id.* at 289) “The statute does not differentiate between ‘neutral’ and selective publishers” (*id.*). “A defendant is therefore immune from state law liability if (1) it is a ‘provider or user or an interactive computer service’; (2) the complaint seeks to hold the defendant liable as a ‘publisher or speaker’; and (3) the action is based on ‘information provided by another information content provider’” (*id.* at 286-287).

The second and third prongs require courts “to consider each cause of the action alleged ‘to determine whether a plaintiff’s theory of liability would treat a defendant as a publisher or speaker of third-party content’” (*Doe v. Grindr Inc.*, 128 F.4th 1148,1151 [9th Cir 2025] [internal

citations omitted]). As such, under the statute, internet companies cannot be held liable “for decisions relating to the monitoring, screening, and deletion of content from its network-actions quintessentially related to a publisher’s role” (*Green v. Am. Online (AOL)*, 318 F.3d 465, 471 [3rd Cir 2003]).

However, service providers are only entitled to this broad immunity where the content at issue is provided by “another information content provider” (47 U.S.C. § 230 [c][1]). Thus, “a website may lose immunity under the CDA by making a material contribution to the creation or development of content” (*Kimzey v. Yelp! Inc.*, 836 F.3d 1263, 1269] [9th Cir 2016]). “This ‘material contribution’ test, as the Ninth Circuit has described it, ‘draw[s] the line at the crucial distinction between, on the one hand, taking actions...to...display...actionable content and, on the other hand, responsibility for what makes the displayed content [itself] illegal or actionable’” (*Force*, 934 F.3d at 68 [internal citations omitted]). In instances, it has been held that “a website operator who edits in a manner that contributes to the alleged illegality...is directly involved in the alleged illegality and thus not immune” (*Fair Housing Council of San Fernando Valley v. Roomates.Com, LLC*, 521 F3d 1157, 1169 [9th Cir 2008]).

Under the statute, “interactive computer service” is defined as “any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet... (47 U.S.C. § 230 [f][2]). An “information content provider” is defined as “any person or entity that is responsible, in whole or in part, for the creation or development of information provided though the Internet or any other interactive computer service.” (47 U.S.C. § 230 [f][3]).

In this matter, it is undisputed that XVideos.com qualifies as an “interactive computer service” that allows users to post content within the meaning of Section 230 (*Roomates.com.*,

521 F.3d at 1162 [“The most common interactive computer services are websites”]; *Ascentive, LLC v. Opinion Corp.*, 842 F. Supp. 2d 450, 473 [E.D.N.Y. 2011] [A consumer review website was an “interactive computer service”]. Further, plaintiff’s claims the Court can reasonably discern seek to impose liability on the XVideo defendants in their capacity as a publisher or speaker (*Herrick v. Grindr, LLC*, 306 F. Supp. 3d 579, 593 [S.D.N.Y. 2018] [“Allegations premised on an ICS’s failure to ‘block, screen, or otherwise prevent the dissemination of a third party’s content,’ seek to hold the defendant liable in its capacity as a ‘publisher’”]). The remaining question for the Court to consider is whether, accepting the facts alleged in the Complaint as true, the impersonating content uploaded was “provided by another information content provider” (47 U.S.C. § 230 [c][1]).

The Complaint alleges that the impersonating profile and pictures of plaintiff were posted by defendants Barounis and Viera. Plaintiff’s contention that the XVideo defendants are liable for refusing or failing to remove offending material prepared by a third party, or that they may be held responsible for allegedly defamatory postings made by third parties does not state a viable basis for liability (*Shiamili*, 17 NY3d at 288-289 [“Read[ing] section 230 as generally immunizing internet service providers from liability for third-party content wherever such liability depends on characterizing the provider as a ‘publisher or speaker’ of objectionable material”]; *Doe v. MySpace, Inc.*, 528 F3d 413, 418 [5th Cir 2008] [“Parties complaining that they were harmed by a Web site’s publication of user-generated content have recourse; they may sue the third-party user who generated the content, but not the interactive computer service that enabled them to publish the content online”]; *Montanino v. New York City Dep’t of Sanitation*, 239 AD3d 635, 636 [2d Dept 2025] [The New York Department of Sanitation was not responsible for an alleged defamatory statement posted on its internal communication network

messaging board by others since there was no allegation the City defendants authored the statement]). Nowhere in the Complaint does plaintiff allege that the XVideo defendants posted or created the impersonating profile themselves, altered or edited its contents, or encouraged, required, or otherwise induced defendants Barounis and/or Viera, or any other user, to create the profile or upload unlawful content. To the contrary, plaintiff even alleges in her Complaint that Barounis and Viera allegedly making this impersonating profile goes against XVideo.com's Terms and Agreements (*see* NYSCEF Doc. No. 6, ¶ 178).

The Court also finds plaintiff's argument that the XVideo defendants should be responsible for her alleged stolen identity, and that Section 230 does not apply in cases, unavailing (*Jones v. Dirty World Entertainment Recordings LLC*, 755 F.3d 398, 410 [6th Cir 2014] ["A material contribution to the alleged illegality of the content does not mean merely taking action that is necessary to display of allegedly illegal content. Rather, it means being responsible for what makes the displayed content allegedly unlawful]).

It has also been held that "Sections 50 and 51 of the New York Civil Right Law sounds in privacy, not intellectual property, and thus does not fall within the intellectual property exceptions in Section 230" (*Ratermann v. Pierre Fabre USA, Inc.*, 651 F.Supp.3d 657, 669 [S.D.N.Y. 2023]). To the extent plaintiff tries to argue that Section 230 of the CDA does not apply since she is alleging the XVideo defendants violated NY General Business Law § 349 and 350, this also fails (*Brodie v. Green Spot Foods, LLC*, 503 F.Supp.3d 1, 11 [S.D.N.Y. 2020] ["The Court need not determine whether Amazon would be liable under GBL § 350 because the CDA nevertheless bars recovery"]).

Equally, plaintiff's contention that this immunity is lost because the XVideo defendants allowed the dissemination of plaintiff's personal information and allowed discriminatory content

(age, sex, sexual orientation, ethnicity, etc.) is unsuccessful (*Herrick*, 306 F.Supp.3d at 589 [“To the extent Grindr contributes to the impersonating profiles, it is through such ‘neutral assistance.’ Categorization features, such as Grindr’s drop-down menu for ‘preferred sexual position,’ constitute quintessential ‘neutral assistance’”]; *see also Fair Housing Council of San Fernando Valley*, 521 F.3d at 1169 [“A dating website that requires users to enter their sex, race, religion and marital status through drop-down menus, and that provides means for users to search along the same lines, retains its CDA immunity insofar as it does not contribute to any alleged illegality”]).

As such, plaintiff’s claims are barred against the XVideo defendants pursuant to Section 230 of the CDA.

D. Failure to state a Cause of Action

In addition to dismissal for lack of personal jurisdiction and pursuant to the CDA, the XVideo defendants move for dismissal on the ground that Plaintiff’s Complaint fails to state a cause of action against them.

They state that, although it is unclear, the Complaint appears to be alleging an aiding-and-abetting type claim against them, alleging in essence that movants enabled defendants Barounis and Viera to create the relevant profile (*see* NYSCEF Doc. Nos. 3,6). The XVideo defendants argue that the Complaint fails to state such a cause of action for two reasons: (1) the Complaint’s specific allegations (that the movants do “not review the profiles”) negate necessary elements of the claim against movants; and (2) the Complaint’s more general allegations- *e.g.*, that movants “have knowingly promoted, participated in, facilitated, assisted, enabled, materially contributed to, encouraged, and induced plaintiff’s harm via allowing defendants Barounis and

Viera to unlawfully use plaintiff's stolen identify to harass and harm are too conclusory to state a claim, as they fail to provide the factual underpinnings for their legal conclusions (*id.*)

Furthermore, the XVideo defendants argue the Complaint also alleges that all defendants violated the federal prohibition on revenge porn pursuant to 15 U.S.C. Section 6851 ("Section 6851"), which movants argue is inapplicable as the Complaint alleges that defendants Barounis and Viera downloaded non-sexually explicit photos of plaintiff from her social media profiles then superimposed plaintiff's face "on other, separate images of women engaging in sexual conduct" (*see* NYSCEF Doc. Nos. 3, 6).

The Court agrees that for the reasons set forth by the XVideo defendants the Complaint fails to state a claim against defendants WCGZ and the Pacauds.

E. Leave to Amend

The XVideo defendants also argue that plaintiff should not be given leave to amend the Complaint as any amendment would be futile as plaintiff cannot cure the fatal defects identified above and cannot plead personal jurisdiction into existence, nor will her claim survive Section 230.

The Court notes that plaintiff moved to Amend her Complaint in 2024 (*see* NYSCEF Doc. No. 11). That motion was closed out by Justice Sweeting's Decision and Order stating that the case has been removed to federal court (*see* NYSCEF Doc. No. 36). However, the Court finds that leave for plaintiff to Amend her Complaint as to the XVideo defendants is inappropriate and not warranted given the deficiencies in the complaint (*Domen v. Vimeo, Inc.*, 433 F. Supp. 3d 592, 607 [S.D.N.Y. 2020] ["In view of the fatal deficiencies in....claims described above, we see no abuse of discretion in the district court's denial of leave to amend"]).

In sum, based on the jurisdictional issues, immunity pursuant to the CDA, and failure to state a claim, the XVideo defendants' motion to dismiss must be granted.

II. Plaintiff's Motion (Motion Sequence 003)

A. *Default Judgment and Striking the City's Answer*

Plaintiff moves for an Order pursuant to CPLR 3126 striking defendant City's late answer and granting plaintiff default judgment against the City.

In support of an Order for default judgment against the City, plaintiff argues that the City was personally served with the Summons and Second Amended Complaint on June 20, 2024 (*see* NYSCEF Doc. No. 33) and therefore, the City's time to answer was due on or before July 11, 2024, which the City failed to do. In addition, plaintiff argues that the City did not move to extend its time to serve an answer and no extensions have been given or stipulations entered into. Plaintiff notes that on May 20, 2025, the City filed its Answer with counterclaims along with a demand for a bill of particulars (*see* NYSCEF Doc. No. 59). Plaintiff argues that the City offers no excuse for the late Answer, and to date, no notice of appearance by the City has been filed in this action which violates CPLR 321 which also renders their answer defective.

In opposition, the City argues that plaintiff's motion for default judgment should be denied because the only Complaint served on the City was the Second Amended Complaint, which should be dismissed as a nullity. The City points to plaintiff's Affirmation of Service on the City which established service of the Second Amended Complaint, and not any prior complaints (*see* NYSCEF Doc. No. 33). Alternatively, the City also argues that the Court should deny plaintiff's motion for default judgment and issue an Order compelling plaintiff to accept the Answer to the Second Amended Complaint as the City has a reasonable excuse for the delay and plaintiff has not been prejudiced. The City highlights that the attorney assigned to this case for

the City only recently became involved in this matter for the purpose of handling the instant motion. Accordingly, the City attached an Affirmation of Joseph Cardillo, the Deputy Unit Chief of the Early Intervention Unit of the New York City Law Department's Tort Division, wherein he affirms that the delay was caused by "significant and reasonable confusion caused by multiple overlapping litigation in multiple forums" (*see* NYSCEF Doc. No. 69). In turn, the City argues that plaintiff's motion for a default judgment fails to demonstrate how the City's delay in answering resulted in any prejudice.

In furtherance of her motion for a default judgment, plaintiff argues that the City's excuse of law office failure for its late Answer should fail because the City participated in the negotiations and remand back to state court after this matter's removal to federal in August 2024 (*see* NYSCEF Doc. Nos. 63, 64). Plaintiff also argues that the City's excuse is not law office failure, it is deliberate neglect. Plaintiff contends that the City even failed to submit any excuse in its Answer until such time plaintiff filed this instant motion. Plaintiff alleges that this demonstrates a calculated attempt by the City, despite its presumed legal acumen and familiarity with the CPLR, to circumvent proper procedure and exploit the plaintiff's *pro se* representation.

In response to the City's argument that plaintiff was not prejudiced by its delay in answering, plaintiff argues that she has been prejudiced. Plaintiff alleges she has and continues to suffer immediate and irreparable harm and is prejudiced by the NYPD's alleged failure to supervise Barounis along with the preservation of evidence due to the City's delay. Plaintiff states that the City knew or should have known, even absent specific demand by plaintiff, that Barounis' access to NYPD resources would bear upon the parties' dispute, and given such knowledge, the City had an obligation to preserve the Electronically Stored Information ("ESI") but failed to do so.

CPLR 2005 provides that “a court shall not, as a matter of law, be precluded from exercising its discretion in the interests of justice to excuse delay or default resulting from law office failure.” “Law office failure, under CPLR § 2005, may be excused where the neglect was neither willful nor prejudicial to the opposing party” (*Diaz v. City of New York*, 161270/2023, 2024 WL 4582311 (N.Y. Sup. Ct. Oct. 22, 2024)). Here there is no indication that the failure to file the answer was deliberate or intended to frustrate the process.

In addition, the Court finds that there is no evidence that plaintiff is prejudiced (*see Spira v. New York City Transit Auth.*, 49 AD3d 478 [1st Dept 2008]) [“Under the circumstances, it was an improvident exercise of discretion to grant the default judgment. While defendant's excuse for its default, i.e., law office failure by reason of understaffing, is not particularly compelling, it constitutes “good cause” nonetheless, especially since there is no evidence that plaintiff was prejudiced; on the other hand, defendant will be severely prejudiced if the motion is granted... In our view, this is not an appropriate case for departure from this State's preference for resolving controversies upon the merits”] [internal citations omitted]).

Accordingly, the Court, in its discretion, denies plaintiff's motion for a default judgment against the City.

B. Summary Judgment

Plaintiff also moves for summary judgment against the City. The movant has the initial burden of proving entitlement to summary judgment (*Winegrad v. New York Univ. Med., Ctr.*, 64 NY2d 851 [1985]). “The proponent of summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact” (*Alvarez v. Prospect Hosp.*, 68 NY2d 320, 323 [1986]). Once the movant has satisfied this standard, the burden shifts to the opponent

to rebut that prima facie showing, by producing contrary evidence, in admissible form, sufficient to require a trial of material factual issues (*Kaufman V. Silver*, 90 NY2d 204 [1997]). To defeat a motion for summary judgment, the opposing party must produce evidentiary proof in admissible form sufficient to require a trial of material questions of fact (*Elstein v. City of New York*, 209 AD2d 186 ([1st Dept 1994])). Mere conclusions, unsubstantiated allegations or assertions are insufficient to create an issue of fact (*Zuckerman v. City of New York*, 49 NY2d 557, 562 [1980]). If there is any doubt about the existence of a triable issue of fact or if a material issue of fact is arguable, summary judgment should be denied (*see Celardo v. Bell*, 222 AD2d 547,548, [2d Dept 1995]).

A failure to make a prima facie showing requires the Court to deny the motion, regardless of the sufficiency of opposing papers (*Alvarez*, 68 NY2d at 324; *JMD Holding Corp. v. Congress Financial Corp.*, 4 NY3d 373 [2005]).

Further, CPLR 3212(b) states that if “it shall appear that any party other than the moving party is entitled to summary judgment, the court may grant such judgment without the necessity of a cross-motion.” “Recognizing that ‘[a] motion for summary judgment must be addressed to one or more specific causes of action or defenses,’ the Appellate Divisions have uniformly held that a court may search the record and grant summary judgment in favor of a nonmoving party only with respect to a cause of action or issue that is the subject of the motions before the court” (*Dunham v. Hilco Const. Co., Inc.*, 89 NY2d 425, 429-430 [1996]; *see also Vinder v. Showbran Leasing & Management, Inc.*, 298 AD2d 325, 325 [1st Dept 2002] [“While a court may deny a party’s motion for summary judgment and yet search the record to grant summary judgment to the non-moving party on the same issue, summary judgment may not be granted sua sponte with respect to a separate issue which was not addressed by any party]).

Generally, pre-discovery summary judgment motions have been granted when the factual record is undisputed, the factual disputes are legally irrelevant to the parties' claims, or the non-movant fails to show a need for discovery (*Hughes v. TSR, Inc.*, 652735/2020 2021 WL 840015 [NY County Sup. Ct. 2021]).

It seems that in support of the part of the motion seeking summary judgment, plaintiff is claiming that the NYPD overlooked issues, along with defendant Barounis' documented anger, lies/misrepresentation, inability to get along with his commanding officers/coworkers and rewarded Barounis with preferential transfers because he is a "legacy" via his family connections within the NYPD, which led to her harm. It also seems that plaintiff is alleging that Barounis, who plaintiff is attesting has access to NYPD computers, has routinely stalked plaintiff to further his goal of bringing death/physical harm, severe emotional distress and economic harm to plaintiff. Furthermore, plaintiff asserts that the City has known about Barounis' fraud for years and has taken no actions to discipline Barounis to protect the public and plaintiff. Plaintiff also contends that Barounis' NYPD online profile which displays lawsuits filed against him evidence a pathology of abuse, negligence and disregard for human life which make him a threat to public safety.⁶

Plaintiff asserts that on August 31, 2024, she received WhatsApp messages from unknown numbers, allegedly originating from the United Kingdom, stating that the senders obtained her information from the profile that was created on XVideo.com (*see* NYSCEF Doc. No. 53). Plaintiff states that in fearing for her safety, plaintiff filed a petition in New York City Family Court seeking Temporary Orders of Protection ("TOP"), which were granted (*see* NYSCEF Doc. No. 54). Plaintiff claims that upon being served with the TOP, Barounis was

⁶ The Court notes that plaintiff has not attached any documentary evidence regarding this claim in support of her motion.

placed on modified duty by the NYPD. Plaintiff alleges that, following this, members of Barounis' family acted as proxies to pressure plaintiff into withdrawing the TOP. Plaintiff cites the alleged conduct includes threats, acts of financial abuse, sexual abuse, constructive evictions, threats to impede the litigation and NYPD internal affairs investigation against Barounis by soliciting favors, intimidation tactics, etc. Plaintiff further asserts that there were also threats to derail the career of the detective who investigated plaintiff's complaint, and that these matters were made known to the NYPD on October 28, 2024.

In further support, plaintiff argues the NYPD is negligent in its supervision and retention of Barounis and that the NYPD has and had actual or constructive knowledge of Barounis' propensity for the sort of behavior which caused the plaintiff's harm. Plaintiff also states she believes the NYPD had the ability to control Barounis and the need to exercise such control and failed to do so. Additionally, plaintiff alleges that Barounis engaged in tortious conduct on NYPD's premises or using NYPD property/resources/equipment because of his employment status with the NYPD⁷. Plaintiff states, to date, Barounis has not even received any command disciplines. As such, plaintiff argues it is undisputed that the City has known about Barounis' abuse of authority and material representations or other illegal activities for years and failed to take requisite and appropriate action. Therefore, plaintiff argues that summary judgment is warranted.

In opposition, the City argues that the Court should deny plaintiff's motion for summary judgment as premature since no discovery has taken place and no parties have been deposed. The City argues that as no preliminary conference has been held, and no Case Scheduling Order has been issued, discovery is necessary to determine several issues of fact justifying denial of

⁷ The Court notes, again, that plaintiff has not attached any documentary evidence regarding this claim in support of her motion.

plaintiff's motion. The City contends those issues of fact are (1) whether defendant Barounis actually engaged in the actions alleged in the Complaint; and (2) whether Barounis was acting within the scope of his employment with the NYPD at the time. The City asserts that, if the allegations plaintiff makes against Barounis are true, Barounis was likely acting upon personal motives unrelated to the furtherance of NYPD business, taking his actions outside the scope of his employment (*see* NYSCEF Doc. No. 6). The City also notes that the plaintiff has not attached any documentation to the instant motion proving that Barounis' alleged actions were taken while on duty, using City resources, or in furtherance of police department goals or objectives (*see* NYSCEF Doc. Nos. 61-66).

Here, it seems the only claims plaintiff asserts against the City are negligent hiring, retention or supervision, and respondeat superior. As such, the Court will address those claims below.

“The law is well settled that an employer has a duty to use reasonable care and refrain from knowingly retaining in its employ a person with known dangerous propensities in a position that would present a foreseeable risk of harm to others. This rule is no less enforceable when the employer is the government. ‘[The City] may not with impunity retain in service of an employee from whose retention danger to others may reasonably be anticipated’” (*Haddock v. City of New York*, 140 AD2d 91 [1st Dept 1988] [internal citations omitted]). “[W]hen a plaintiff invokes the doctrine of respondeat superior, the plaintiff has the burden of establishing by a fair preponderance of the credible evidence that the act complained of occurred while the defendant's employee was acting within the scope of his employment with the City of New York” (*Davis v. City of New York*, 226 AD2d 271, 271-272 [1st Dept 1996]). “[W]here an employee's conduct is

brought on by a matter wholly personal in nature, the source of which is not job related, his actions cannot be said to fall within the scope of his employment” (*id.*).

Here, plaintiff has failed to make a prima facie showing of entitlement to judgment as a matter of law against the City with regard to her claim of respondeat superior as plaintiff’s allegations were deficient as matter of law, irrespective of the factual submissions (*see Jeffers v American Univ. of Antigua*, 125 AD3d 440, 441-443 [1st Dept 2015] [upholding denial of summary judgment motion as premature except as to fraud claims where the allegations were insufficient as matter of law]). Even if we take every allegation plaintiff alleges as true, plaintiff has no claim to hold the City liable for defendant Barounis’ alleged actions towards her, as Barounis’ conduct was wholly personal in nature, and was not related to his employment in the NYPD.

In respect to plaintiff’s claims against the City for negligent hiring, retention or supervision, the Court also finds that plaintiff also failed to make a prima facie showing of entitlement to judgment as a matter of law. Causes of action based upon negligent hiring, retention, training or supervision “should be distinguished from the established legal doctrine of ‘respondeat superior,’ where an employer is held liable for the wrongs or negligence of an employee acting within the scope of the employee’s duties or in furtherance of the employer’s interests (*Gonzalez v. City of New York*, 133 AD3d 65, 67 [1st Dept 2015]). “In contrast, under the theory of negligent hiring and retention, an employer may be liable for the acts of an employee acting outside the scope of his or her employment” (*id.*). “Rather, what the plaintiff must demonstrate is a connection or nexus between the plaintiff’s injuries and the defendant’s malfeasance” (*id.* at 70). Here, even if taking every fact alleged in plaintiff’s Complaint as true,

there is no connection or nexus between plaintiff's injuries and the City hiring, retaining, or supervising defendant Barounis.

Moreover, based on the facts as alleged in the complaint, even accepting them all as true, and given that any factual disputes are legally irrelevant to the parties' claims, and no further discovery is necessary, the Court finds that the City is entitled to summary judgment on plaintiff's claims of negligent hiring, retention or supervision, and respondeat superior (*Hickox v. Hickox*, 72 AD2d 789 [1st Dept 1979] ["[T]his Court may grant summary judgment to a non-moving party...if the facts warrant it]). More specifically, not only did plaintiff fail to demonstrate an entitlement to summary judgment, there is no allegation and no additional discovery or unresolved factual dispute that could sustain the claims against the City. The gravamen of the claim against Barounis is clearly based on alleged outrageous behavior that is outside the scope of his employment. Indeed, fraud, identity theft and creating a pornographic video to harass plaintiff are acts that are unrelated to Barounis' employment with the City. Nor based on the allegations, regardless of any remaining dispute facts or discovery could it be possible that there is a connection or nexus between plaintiff's injuries and the City hiring, retaining, or supervising defendant Barounis. Again, Barounis' alleged personal conduct towards plaintiff is entirely unrelated to his employment or the City's hiring and supervising him.

To the extent plaintiff raises various other allegations against Barounis in her papers, the Court notes they are unrelated to her causes of action and thus irrelevant to the Court's analysis here.

Accordingly, plaintiff's motion for summary judgment must be denied, and, based on the Court's review of the record, summary judgment is granted dismissing the claims against the City.

III. The City's Cross-Motion (Motion Sequence 003)

As plaintiff's motion for default judgment was denied, the City was granted summary judgment and the Court ruled that it is accepting plaintiff's Second Amended Complaint above, the City's cross-motion is moot.

Accordingly, it is hereby;

ORDERED, that defendant WCGZ's and the Pacauds' motion for dismissal (motion sequence 002) is granted; and it is further

ORDERED, that plaintiff's motion striking the City's Answer, granting plaintiff a default judgment and/or granting plaintiff summary judgment (motion sequence 003) is denied; and it is further

ORDERED, that summary judgment is granted to the City of New York and the complaint is dismissed against the City; and it is further

ORDERED, that the City's cross-motion is denied as moot; and it is further

ORDERED, as the City is no longer a party to this case, it shall be transferred to a Non-City Part; and it is further

ORDERED, that this action is severed accordingly.

This constitutes the Decision and Order of the Court.

12/8/2025

DATE



ARIEL D. CHESLER, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE