Apisa v Pace Univ.
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March 26, 2026
Supreme Court, New York County
Docket Number: Index No. 158711/2019
Judge: David B. Cohen
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. DAVID B. COHEN** **PART** **58**

Justice

---X

BRANDON APISA,

Plaintiff,

- v -

PACE UNIVERSITY, WINFIELD SECURITY CORPORATION, JOHN DOES 1-50 (a series of fictitious persons),

Defendants.

---X

INDEX NO. 158711/2019

MOTION DATE 07/30/2025

MOTION SEQ. NO. 001 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 70, 72, 74, 75, 76, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 115, 116

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

The following e-filed documents, listed by NYSCEF document number (Motion 002) 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 69, 71, 73, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 113, 114

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

In motion sequence no. 001, defendant Pace University (Pace) moves, pursuant to CPLR 3212, for summary judgment dismissing plaintiff's complaint and for summary judgment on its cross-claim for contractual indemnification against defendant Winfield Security Corporation (Winfield). In motion sequence no. 002, Winfield moves, pursuant to CPLR 3212, for summary judgment dismissing the complaint and all cross-claims against it.

BACKGROUND

This action arises out of a physical altercation between plaintiff and nonparty Jeffrey Lane (Lane), a security guard employed by Winfield, that occurred on September 9, 2018, at Maria's Tower, One Pace Plaza/Three Spruce Street, in New York County (NY St Cts Elec

Filing [NYSCEF] Doc No. 32, Winfield statement of material facts ¶ 2; NYSCEF Doc No. 67, Pace statement of material facts, ¶¶ 1, 13, 25).

Pace owns Maria's Tower (NYSCEF Doc No. 35, Metzger affirmation, exhibit C, ¶ 3), and Winfield furnishes security services to Pace under a written contract (the Winfield Contract) (*id.*; NYSCEF Doc No. 89, Kost affirmation, exhibit J). Site-specific training documents for Winfield security guards assigned to Pace direct that "[a]s a Pace Security Officer, one of your important roles will be Access Control. Proper access control deters unauthorized individuals from entering the premises as well as giving authorized individuals a sense of security" (NYSCEF Doc No. 91, Kost affirmation, exhibit L at 5). The documents further direct that students must show their Pace ID card to access Pace buildings (*id.* at 6).

Maria's Tower houses classrooms and student dormitories (NYSCEF Doc No. 41, Metzger affirmation, exhibit I, plaintiff tr at 18). All Pace students can access the first through sixth and the eighteenth floors by showing a student ID to the security guards posted at the building's entrance (NYSCEF Doc No. 32, ¶ 4; NYSCEF Doc No. 41 at 18, 20-21; NYSCEF Doc No. 43, Metzger affirmation, exhibit K, Vincent Beatty tr at 37). Student dormitories occupy the seventh through seventeenth floors (NYSCEF Doc No. 41 at 18). The sixth floor serves as a cross-over floor where residents and their guests can transfer to elevators that lead up to the residential floors (NYSCEF Doc No. 32, ¶ 4; NYSCEF Doc No. 43 at 37, 102).

According to Pace's resident student handbook, residents must register their guests and obtain a guest pass from the community desk in each residence hall before the guest may enter (NYSCEF Doc No. 42, Metzger affirmation, exhibit J at 15). Residents are responsible for maintaining guest passes and presenting them to security when they and their guests enter a residence hall, and must be present when their guests check in and out (*id.* 15-16).

The handbook recites that "[g]uests who are not currently signed-in, that arrive after the community desk has closed will not be permitted to enter the residence hall. In the event of a dire situation, at the discretion of a resident assistant or residential life professional staff member on-call, a guest may be allowed to sign-in after hours" (*id.*). Pace's operating procedures for controlling guest access to its residence halls provides that "[i]n order to gain access to the resident halls, all guests must be in possession of a valid housing guest pass and must be accompanied by the host resident at all times. Guest passes are issued by the OHRL desk attendant" (NYSCEF Doc No. 92, Kost affirmation, exhibit M at 1).

The community desk at Maria's Tower is located near the building's entrance (NYSCEF Doc No. 32, ¶ 5; NYSCEF Doc No. 41 at 19, 21; NYSCEF Doc No. 43 at 37-38, 48). For the safety of the student residents, a security guard stationed at a post on the sixth floor of Maria's Tower controls access to the residential floors, and only those guests with passes are permitted access (NYSCEF Doc No. 32, ¶¶ 6-7; NYSCEF Doc No. 43 at 38, 40, 106, 119). A post order (Maria's Tower entrance post CC7) reads, "[a]llow only those persons having a Resident I.D. card or Guest pass to enter residence hall. Resident & guest will present Residence Hall ID & guest pass to security officer to verify that pass is current" (NYSCEF Doc No. 92 at 8).

Plaintiff was a student at Pace in September 2018, though he resided off-campus (NYSCEF Doc No. 32, ¶ 2; NYSCEF Doc No. 67, ¶ 10). According to Pace's guest log for Maria's Tower, plaintiff obtained a guest pass to visit resident Isabella Ardila (Ardila) at 4:44 p.m. on September 8, 2018 (NYSCEF Doc No. 44, Metzger affirmation, exhibit L). The guest pass timed out at 8:18 p.m. that same day and expired at 1 a.m. on September 9, 2018 (*id.*; NYSCEF Doc No. 32, ¶ 11; NYSCEF Doc No. 43 at 44).

The incident occurred after plaintiff, Ardila, and several friends returned to Maria's Tower between 2 a.m. and 3 a.m. (NYSCEF Doc No. 32, ¶ 9). Upon arriving on the sixth floor, plaintiff presented what he believed was a guest pass to the security guard (*id.*, ¶ 10), later identified as Lane (NYSCEF Doc No. 43 at 19). Plaintiff, however, showed Lane a water bottle wrapper (*id.*; NYSCEF Doc No. 41 at 43). Plaintiff displayed his Pace ID and asked if he could take Ardila to her room before coming back down, but Lane "said no, you're not a student here. This is fake." (*id.* at 32), he could not allow plaintiff to go up (*id.* at 44), and plaintiff was not allowed to be there (*id.* at 47).

Plaintiff testified that although he told Lane he would leave, Lane "jump[ed] out" and started chasing him (*id.* at 35-36). At that point, plaintiff ran to a stairwell and up to the seventh floor, with Lane following (*id.* at 34-35, 37, 47; NYSCEF Doc No. 32, ¶ 13; NYSCEF Doc No. 67, ¶ 16). While on the seventh floor, plaintiff pressed the "up" call button on the elevator panel at least six times and made at least five attempts to enter an elevator by going "through" Lane (NYSCEF Doc No. 41 at 54, 60, 72, 78, 86, 88; NYSCEF Doc No. 32, ¶ 15). Plaintiff testified that Lane pushed or slapped his hand, grabbed his chest, shoulders, neck and arms, and pushed him away before contact from Lane caused him to "fall" into the elevator (NYSCEF Doc No. 41 at 62-64, 66, 76, 80, 83-84).

Plaintiff and Lane later rode an elevator down to the main floor (*id.* at 96). Shortly after exiting the elevator, Lane grabbed plaintiff's neck from behind and "yank[ed]" him backwards, after which plaintiff threw a punch at Lane's face (*id.* at 97-99). Plaintiff was placed in a security office for five to 15 minutes with a different guard, who told plaintiff that police would be summoned (*id.* at 102-103, 115). The police were not called, no charges were filed, and plaintiff left the building (*id.* at 103-104). Plaintiff reported the incident to the New York City

Police Department the next day as a walk-in complainant (NYSCEF Doc No. 88, Kost affirmation, exhibit I). Plaintiff was not aware if the police made an arrest or investigated the incident (NYSCEF Doc No. 41 at 128).

Lane and his Winfield supervisor, Cameron R. Romain (Romain), prepared incident reports. Lane reported that after he told plaintiff he could not enter the dormitory without a guest pass, plaintiff went up the stairs and Lane followed (NYSCEF Doc No. 46, Metzger affirmation, exhibit N at 2). Lane wrote that after he stopped plaintiff from getting onto an elevator and told him to leave, plaintiff "started trying to force his way onto the elevators and up the stairs again at which point I forcefully removed him from the area and took him back to base" (*id.*). Lane wrote, "while in the hall near the F.S.D. station he swung at my face but missed while I was holding him.…I was able to release him and tend to bloody lip" (*id.*).

Romain was contacted about an unauthorized person attempting to pass Lane without a Maria's Tower ID or a guest pass (*id.* at 4). Romain reported that he "immediately went to that location but there was no one" (*id.*). When Romain returned to base, he tried to interview plaintiff "who was still being combative, stated that he was sign[ed] in earlier but didn't have his pass," to which Romain responded, "he should of [sic] let us know and we would of [sic] called the RA and this would of [sic] been avoided" (*id.*). Romain wrote that plaintiff "stated he have [sic] to go and left the building" (*id.*).

Pace's executive director of safety and security, Vincent Beatty (Beatty), testified that overnight guests must secure a guest pass from Residential Life and present the pass to the security officer on the sixth floor to access the dormitory (NYSCEF Doc No. 43 at 38). If a guest loses the physical pass and wishes to enter the dormitory after the desk closes, the guest must contact the building's resident director to gain entry (*id.* at 38, 46-49).

According to Beatty, Winfield recommends applicants it believes are "sufficient or good enough to be assigned to Pace" based, in part, on the results of a psychological profile examination Winfield administers to each applicant (*id*. at 28-29). Pace staff then interview each applicant and check that he or she has a current New York State security guard license before being placed on a campus (*id.* at 27, 33). Pace does not perform any criminal background checks as that responsibility lies with Winfield, and in any event, part of the process for obtaining a security guard license involves a criminal background check (*id.* at 32).

Pace and Winfield provide training on how to prepare incident reports, handle access to buildings, and interact with students and staff and other topics several times a year (*id.* at 33-35). Winfield schedules the security guards assigned to Pace (*id.* at 20-22; NYSCEF Doc No. 67, ¶ 26), processes payroll (NYSCEF Doc No. 43 at 35) and employs shift supervisors (*id.* at 22-23, 52-53). Pace assigns one of its security managers to work each security shift (*id.* at 100-101).

Under the Winfield Contract, Pace had the right to remove a security guard from a campus (*id.* at 25), and Pace asked Winfield remove Lane from its account based on video of the incident (*id.* at 24, 147). Beatty testified that Lane "showed a lapse of good judgment when he started getting physical, and to the point of where he would have his hand or his arm around the head area of [plaintiff]" (*id.* at 24). Beatty believed the security officers were justified in asking plaintiff to stay in the security office while they conducted an initial investigation and that the officers had grounds to contact the police to arrest plaintiff based on plaintiff's repeated attempts to enter the elevators and his refusal to leave the seventh floor (*id.* at 131-133). Beatty added that Lane showed great restraint in attempting to prevent plaintiff, who "was fighting and trying to get around … Lane," from accessing the dormitory floors (*id.* at 124-125, 132, 134, 145).

Winfield's president, John M. Beck (Beck), testified that Winfield identifies candidates it believed were suitable to work at Pace based on the candidate's experience and personality (NYSCEF Doc No. 45, Metzger affirmation, exhibit M, Beck tr at 49). Winfield performs drug screening and psychological profile examinations of all its applicants, though it does not perform criminal background checks as that is part of the State's security guard licensing process (*id.* at 52). Winfield trains its guards on general orders, policies and procedures, and guards assigned to Pace receive site-specific training for that assignment (*id.* at 54-56, 85-86). Winfield maintains sign-in sheets for its payroll records (*id.* at 55).

Winfield guards at Pace report to duty shift supervisors, who are Winfield employees (*id.* at 17, 66). Winfield assigns shifts to each guard, and if the guard expresses concern about a post or shift, the guard may speak to Winfield's "account manager or whoever assigned them a shift or post" (*id.* at 57). Pace requested Winfield remove Lane from Pace because "the parent was upset" (*id.* at 22). Winfield did not transfer Lane to a different assignment because there were no other comparable positions available (*id.* at 21, 26). As Lane was "no longer active," Winfield terminated him (*id.* at 27-28), and Lane's health and welfare benefits and pension ceased (*id.* at 64). Beck was unaware of any disciplinary incidents involving Lane that occurred before September 2018 and was unaware if Lane was arrested because of this incident (*id.* at 66, 72).

According to Lane's employment application from March 12, 2014, Lane had never been convicted of a misdemeanor or felony, and there were no criminal charges pending against him as of that date (NYSCEF Doc No. 47, Metzger affirmation, exhibit O at 1, 8). New York State registered Lane as a security guard for Winfield effective January 7, 2015 (*id.* at 16).

The complaint against Pace, Winfield and John Does 1-50 pleads six causes of action for: (1) negligent security against all defendants; (2) negligent hiring against Pace and Winfield;

(3) assault and battery against John Doe; (4) false imprisonment against all defendants; (5) punitive damages against all defendants; and (6) intentional infliction of emotional distress against all defendants (NYSCEF Doc No. 1, complaint). Pace asserts cross-claims for contribution, common-law and contractual indemnification, and breach of contract for failure to procure insurance against Winfield (NYSCEF Doc No. 4, Pace answer). Winfield pleads a cross-claim for contribution and/or indemnification against Pace (NYSCEF Doc No. 3, Winfield answer).

DISCUSSION

"To succeed on a motion for summary judgment, the proponent of the 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'" (*Golobe v Mielnicki*, 44 NY3d 86, 92 [2025], *rearg denied* 43 NY3d 1013 [2025] [citation omitted]). If the moving party fails to meet its prima facie burden, the motion must be denied without regard to the sufficiency of the opposing papers (*Vega v Restani Constr. Corp*., 18 NY3d 499, 503 [2012]). If the moving party meets its burden, then the non-moving party must furnish evidence in admissible form sufficient to raise a triable issue (*Alvarez v Prospect Hosp*., 68 NY2d 320, 324 [1986]).

I. Winfield's Motion for Summary Judgment (Motion Sequence No. 001)

A. First Cause of Action for Negligent Security and Third Cause of Action for Assault and Battery

Winfield contends that it owed a duty of care to the residents of Maria's Tower, not plaintiff, to ensure that unauthorized individuals cannot gain access. Even if it owed plaintiff a duty, Winfield argues that plaintiff cannot demonstrate a breach because "one who is injured from the actions of a guard who is merely acting upon his duties does not establish that a guard acted in a negligent manner" (NYSCEF Doc No. 50, Winfield mem of law, ¶ 9). Assuming it

may be liable under the doctrine of respondent superior, Winfield maintains that Lane was "constrained to engage in limited physical struggles" with plaintiff, who did not possess a guest pass and who repeatedly attempted to force his way into the elevators (*id.*, ¶ 10). In addition, only two minutes 40 seconds passed from the time plaintiff and Lane came into contact with each other until the time security from the ground floor arrived at the scene, which defeats any claim of a delayed response in sending backup.

For his part, plaintiff insists that, as an incidental beneficiary to the Winfield Contract, Winfield owed him a duty of care because he was a student, and the Winfield Contract, training documents and post orders did not limit this duty to a specific group of people. Plaintiff contends that Winfield breached its duty and submits the opinion of a premises security and police safety practices expert, who opines that Lane's training was inadequate and fell below the standard of care (NYSCEF Doc No. 94, Jeffrey P. Jannarone aff, ¶ 60).

The expert points to a section in Winfield's Employee Handbook discussing use of force that reads as follows:

> You must not resort to physical force unless you or another individual under your protection is physically attacked. If so, you should defend yourself by using reasonable force to repel or subdue the perpetrators. Reasonable force means not using more force than that is being used against you.
>
> **The use of unnecessary or excessive force is forbidden. A violation of this directive will be cause for dismissal and possible criminal prosecution**" (NYSCEF Doc No. 90, Kost affirmation, exhibit K at 28) (emphasis in original).

The Winfield training materials specific to Pace, by contrast, state that "[s]ecurity officers are not to get physically involved" in violent confrontations at all (NYSCEF Doc No. 91 at 15). Finally, plaintiff argues that Winfield is liable for Lane's assault under a respondeat superior theory.

To prevail on a cause of action for negligence, the plaintiff must prove the existence of a duty running from the defendant to the plaintiff, the defendant's breach, and damages proximately caused by the breach (*Nellenback v Madison County*, 44 NY3d 329 [2025]). The existence and scope of a defendant's duty is a legal issue for the court to decide (*Weisbrod-Moore v Cayuga County*, 44 NY3d 187, 191 [2025]). The absence of a duty of care entitles the defendant to summary judgment (*Oddo v Queens Vil. Comm. for Mental Health for Jamaica Community Adolescent Program, Inc*., 28 NY3d 731, 735 [2017]).

Winfield has shown its entitlement to summary judgment on the negligence claim. Plaintiff frames Winfield's duty of care as a duty to protect him from the acts of its employee (NYSCEF Doc No. 1, ¶¶ 29, 74, 78 [Winfield had a "duty to protect students, residents and guests of Maria's Tower" and "had notice of, or in the exercise of due care, should reasonably have anticipated that careless and negligent behavior" of its security guard who, in the scope of his employment, "acted negligently and recklessly toward plaintiff"]; NYSCEF Doc No. 37, Metzger affirmation, exhibit E, ¶ 4 [Winfield failed to "protect [plaintiff], in causing and allowing the plaintiff to be beaten and battered, assaulted, choked and falsely imprisoned"]).

Assuming Winfield owed plaintiff a duty to protect, Winfield has shown that this duty was never triggered as there is no evidence that Lane had a history of violence such that Winfield could have reasonably anticipated the assault or that the assault was foreseeable (*see Randolph v Rite Aid of N.Y., Inc*., 121 AD3d 599, 599 [1st Dept 2014] [because guard's assault was not foreseeable, defendant's duty to protect plaintiff from injury was never triggered]; *see also C.L. v 2600 Seventh Ave. Realty, LLC*, 242 AD3d 639, 640 [1st Dept 2025] [no facts alleged that porter had previously assaulted someone or had prior criminal history to show that assault was foreseeable such that "defendants' duty to protect [plaintiff] from harm encompassed the

assault"]). Similarly, given that the incident lasted mere minutes, it cannot be said that Winfield was on notice of an escalating situation such that Winfield could have reasonably anticipated it (*see McLaughlan v BR Guest, Inc.*, 149 AD3d 519, 520-521 [1st Dept 2017]).

Plaintiff fails to raise a triable issue of fact. First, *Flynn v Niagara Univ.* (198 AD2d 262 [2d Dept 1993]) is distinguishable. The security contractors in *Flynn* moved for summary judgment on the ground that they did not owe a duty to the plaintiff, who "was at best an incidental beneficiary" of their service contract with the university (*id.* at 263). Winfield has not raised any such arguments on its motion. Even assuming that plaintiff is an incidental beneficiary, plaintiff has not furnished proof that Winfield assumed a legal duty. In *Flynn*, the Court repeated the principle that "a defendant can be held liable in tort to an incidental beneficiary for the negligent performance of contractual duties if the defendant's conduct amounts to misfeasance as opposed to nonfeasance" (198 AD2d at 264, citing *Eaves Brooks Costume Co. v Y.B.H. Realty Corp.*, 76 NY2d 220, 225 [1990]). The defendants' employees there assumed a legal duty to act when they took affirmative steps to stop the snowball fight in which the plaintiff was injured (*id.*). In this case, plaintiff claims that Winfield guards "watched this incident unfold on CCTV" and that it took more than two minutes 40 seconds for Romain to respond (NYSCEF Doc No. 79, plaintiff mem of law at 7-8). Romaine, though, reported that he did not see anyone upon his arrival at the CC7 post (NYSCEF Doc No. 46 at 4) and never intervened in the incident.

As plaintiff asserted the third cause of action for assault and battery against John Doe only, Winfield has no standing to move for its dismissal. While plaintiff contends that he alleged a respondeat superior theory against Winfield related to the assault and battery, his complaint contains no such theory, as nowhere does he allege that the assault and battery was committed

within Lane's scope of employment with Winfield, and it was thus waived (*see e.g., Howe v Vill. of Trumansburg*, 199 AD2d 749 [3d Dept 1993] [as plaintiff did not plead tort theory of vicarious liability against Village in complaint related to alleged assault and battery, it was waived]).

B. The Second Cause of Action for Negligent Hiring or Training

Unlike the doctrine of respondeat superior, "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" (*Gonzalez v City of New York*, 133 AD3d 65, 67 [1st Dept 2015]). An employer may be liable if it "has notice of its employee's propensity to engage in tortious conduct, yet retains and fails to reasonably supervise such employee" (*Moore Charitable Found. v PJT Partners, Inc.*, 40 NY3d 150, 157 [2023]; *Sheila C. v Povich*, 11 AD3d 120, 129-130 [1st Dept 2004] [employer liable if it "knew, or should have known, of the employee's propensity for the sort of conduct which caused the injury"]).

Although "[a]n employer is under no duty to inquire as to whether an employee has been convicted of crimes in the past" (*Yeboah v Snapple, Inc.*, 286 AD2d 204, 205 [1st Dept 2001]), Lane's employment application does not disclose any past convictions for any misdemeanors or felonies or any pending criminal charges (NYSCEF Doc No. 47 at 8). As such, nothing in Lane's application could have reasonably alerted Winfield to determine that further investigation was necessary (*compare Darbeau v 135 W. 3rd St., LLC*, 225 AD3d 537, 538 [1st Dept 2024]).

Winfield's president also testified that he was unaware of any prior disciplinary incidents involving Lane before this incident and that the State performed a criminal background check as part of its licensing process (NYSCEF Doc No. 45 at 52, 72; *see Summors v Port Auth. of New York and New Jersey*, 203 AD3d 558 [1st Dept 2022] [as federal security agencies issued alleged

assailant security clearance after background check and maintained clearance, it indicated that nothing in assailant's past should have given defendant pause to hire him]). Winfield has thus carried its burden on summary judgment on this claim (*see Pallero v Romero*, 242 AD3d 494, 495 [1st Dept 2025]). Moreover, the cause of action fails for the additional reason that plaintiff alleges Lane was acting within the scope of his employment (*see Wheeler v Linden Plaza Preserv., LP*, — AD3d —, 2026 NY Slip Op 00604, *1 [1st Dept 2026] [negligent training claim dismissed where complaint alleged employees were acting within scope of employment]).

Plaintiff, in opposition, fails to produce any evidence to show that Winfield was on notice that Lane had a propensity for acts of violence (*see Pallero*, 242 AD3d at 495; *Ostroy v Six Square LLC*, 100 AD3d 493, 494 [1st Dept 2012]), which is a necessary element (*see Moore Charitable Found.*, 40 NY3d at 158). Plaintiff cites *High v Taylor* (2020 NY Slip Op 32963[U] [Sup Ct, Broome County 2020]) to support his position that his negligent training claim must be sustained because Winfield's negligent training of its security personnel resulted in his injury. Plaintiff, though, misinterprets *High*, as there, the plaintiff's decedent was injured after a patron smuggled a gun into the defendant's bar and shot the decedent (*id.*, *18). The court noted, "[a] negligent supervision or retention claim requires that '[t]he employee also must not be acting within the scope of his or her employment; in that situation the employer could only be liable, if at all, vicariously under the theory of respondeat superior, not for negligent supervision or retention'" (*id.* [citation omitted]). The court dismissed the negligent training claim because the defendant's employees were acting within the scope of their employment (*id.*).

Finally, a plaintiff may pursue a negligent hiring or training claim where the employee is acting within the scope of his or her employment if the plaintiff seeks punitive damages based on allegations that the employer negligently and recklessly hired, retained or supervised the

employee (*see Rivera v Bhuiyan*, 149 AD3d 493, 494 [1st Dept 2017], citing *Quiroz v Zottola*, 96 AD3d 1035, 1037 [2d Dept 2012]). Here, the punitive damages claim has been dismissed, *infra* (*see Henry v Sunrise Manor Ctr. For Nursing & Rehabilitation*, 147 AD3d 739, 742 [2d Dept 2017] [dismissing negligent hiring and retention claim where cause of action for punitive damages has been dismissed]).

C. The Fourth Cause of Action for False Imprisonment

Winfield contends that the false imprisonment claim must be dismissed because probable cause existed to detain plaintiff in the security office for purposes of conducting an investigation. Plaintiff rejects the contention that Winfield had probable cause to detain him for questioning, and maintains that, therefore, the confinement was not privileged.

To sustain a cause of action for false imprisonment, the plaintiff "must establish that the defendant intended to confine the plaintiff, that the plaintiff was conscious of the confinement and did not consent to the confinement, and that the confinement was not otherwise privileged" (*Martinez v City of Schenectady*, 97 NY2d 78, 85 [2001]). The confinement is privileged if there is probable cause, which is a complete defense (*Broughton v State of New York*, 37 NY2d 451, 458 [1975], *cert denied sub nom. Schanbarger v Kellogg*, 423 US 929 [1975]; *Williams v City of New York*, 210 AD3d 516, 517 [1st Dept 2022]).

As an initial matter, Winfield pleads General Business Law § 218 (Defense of lawful detention) as a sixth affirmative defense (NYSCEF Doc No. 34, ¶ 31). The statute is inapplicable as it pertains to retail mercantile establishments and motion picture theaters. Nevertheless, Winfield has demonstrated its entitlement to summary judgment on this claim.

"Probable cause consists of such facts and circumstances as would lead a reasonably prudent person in like circumstances to believe plaintiff guilty" (*De Lourdes Torres v Jones*, 26

NY3d 742, 759 [2016] [internal quotation marks and citation omitted]). "[R]estraint or detention, reasonable under the circumstances and in time and manner, imposed for the purpose of preventing another from inflicting personal injuries or interfering with or damaging real or personal property in one's lawful possession or custody is not unlawful" (*Sindle v New York City Tr. Auth*., 33 NY2d 293, 297 [1973], *rearg denied*, 34 NY2d 755 [1974], *mot to amend remittitur denied* 34 NY2d 756 [1974]).

Based on the totality of circumstances under which probable cause must be judged (*De Lourdes Torres*, 26 NY3d at 759), probable cause existed for plaintiff's detention. Plaintiff conceded that he did not possess a valid guest pass (NYSCEF Doc No. 41 at 43), which was required to enter the dormitory (NYSCEF Doc No. 42 at 15). Beatty testified that, for residents' safety, Lane was justified in physically trying to prevent plaintiff from accessing those floors (NYSCEF Doc No. 43 at 119). Additionally, plaintiff admitted that he threw a punch at Lane's face (NYSCEF Doc No. 41 at 98-99), and a photograph attached to the incident reports depicts Lane with an injury to his face (NYSCEF Doc No. 46). Thus, Winfield was reasonably justified in detaining plaintiff while determining whether the police should be summoned.

Furthermore, confinement is a necessary element of a false imprisonment claim (*Elson v Consolidated Edison Co. of N.Y.*, 226 AD2d 288, 289 [1st Dept 1996]). Plaintiff testified that the security guards "asked me to go in the back room" and that he "[e]ventually … went into the back" (NYSCEF Doc No. 41 at 102-103). Such testimony does not indicate that Winfield would have prevented plaintiff from leaving if he chose to do so (*see e.g. Cecora v De La Hoya*, 106 AD3d 565, 566 [1st Dept 2013]; *Kim v BMW of Manhattan, Inc*., 35 AD3d 315, 315-316 [1st Dept 2006]; *Farina v Saratoga Harness Racing Assn*., 20 AD2d 750, 750 [3d Dept 1964]), only that plaintiff did not wish to sit with Lane. Moreover, although plaintiff testified that a Winfield

security guard told him police would be called (NYSCEF Doc No. 41 at 103), fear of an arrest is insufficient to "constitute the detaining force necessary" to support a false imprisonment claim (*Malanga v Sears, Roebuck & Co.*, 109 AD2d 1054, 1055 [4th Dept 1985], *affd* 65 NY2d 1009 [1985]).

D. The Fifth Cause of Action for Punitive Damages

"Punitive damages are available in a tort action where the wrongdoing is intentional or deliberate, has circumstances of aggravation or outrage, has a fraudulent or evil motive, or is in such conscious disregard of the rights of another that it is deemed willful and wanton" (*Swersky v Dreyer & Traub*, 219 AD2d 321, 328 [1st Dept 1996], *rearg denied* 232 AD2d 968 [1st Dept 1996], *appeal withdrawn* 89 NY2d 983 [1997]). Punitive damages may be awarded in cases involving an assault (*see Alford v St. Nicholas Holding Corp.*, 248 AD2d 144, 144 [1st Dept 1998]), and "can be imposed on an employer for the intentional wrongdoing of its employees only where management has authorized, participated in, consented to or ratified the conduct giving rise to such damages, or deliberately retained the unfit servant, or the wrong was in pursuance of a recognized business system of the entity" (*Loughry v Lincoln First Bank*, 67 NY2d 369, 378 [1986]). An employer is complicit "only when a superior officer in the course of employment orders, participates in, or ratifies outrageous conduct" (*id.*). A superior officer is a person who holds a high level of managerial authority in the employer's operations (*see 1 Mott St., Inc. v Con Edison*, 33 AD3d 531, 532 [1st Dept 2006]).

The conduct at issue in this case is not so unusual or extraordinary as to warrant the imposition of punitive damages (*see Gonzalez v 231 Ocean Assoc.*, 131 AD3d 871, 872 [1st Dept 2015]). Plaintiff has not furnished any evidence demonstrating that Winfield consented to or ratified the assault (*see Ostroy*, 100 AD3d at 494) or that Lane or any of the Winfield employees

at the scene are superior officers (*see Pellegrini v Duane Reade Inc.*, 137 AD3d 651, 652 [1st Dept 2016]). Indeed, Winfield complied with Pace's request to remove Lane from its campus (NYSCEF Doc No. 45 at 22). Moreover, a demand for punitive damages is not an independent cause of action (*Domen Holding Co. v Sanders*, 238 AD3d 510, 511 [1st Dept 2025]).

E. The Sixth Cause of Action for Intentional Infliction of Emotional Distress

A cause of action for intentional infliction of emotional distress requires "(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]). The conduct at issue must be "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" (*Wilson v DiCaprio*, 278 AD2d 25, 26 [1st Dept 2000] [internal quotation marks and citation omitted]).

The conduct at issue was not so outrageous or extreme to support an intentional infliction of emotional distress claim (*see Li v Navaretta*, 220 AD3d 758, 760-761 [2d Dept 2023]; *Berrios v Our Lady of Mercy Med. Ctr.*, 20 AD3d 361, 362-363 [1st Dept 2005]). Plaintiff's assertion that this cause of action should be presented to a jury is insufficient to raise a triable issue of fact.

II. Pace's Motion for Summary Judgment (Motion Sequence No. 002)

A. Pace's Liability

Pace argues that it had no control over the acts of its independent contractor, Winfield, or Lane, a Winfield employee, and thus, it bears no liability to plaintiff. Pace points to a provision in the Winfield Contract that reads, "[a]ll guards furnished hereunder shall be the employees of … [Winfield], an independent contractor and not employees of … [Pace] and … [Winfield] shall

pay all salaries and expenses of said guards" (NYSCEF Doc No. 89 at 2). Pace also argues that Winfield supervised and controlled Lane's work.

Plaintiff contends that Pace exercised sufficient control over Winfield and Lane such that it is vicariously liable for their actions.

Generally, a party who hires an independent contractor is not vicariously liable for the contractor's negligence (*Kleeman v Rheingold*, 81 NY2d 270, 273 [1993]). "The primary justification for this rule is that one who employs an independent contractor has no right to control the manner in which the work is to be done and, thus, the risk of loss is more sensibly placed on the contractor" (*Brothers v New York State Elec. & Gas Corp.*, 11 NY3d 251, 257-258 [2008] [internal quotation marks and citation omitted]). The key issue is whether the party exercised control over the results produced and the means used to achieve those results (*McCann v Varrick Group LLC*, 84 AD3d 591, 591 [1st Dept 2011]).

"Factors relevant to assessing control include whether the worker (1) worked at [the worker's] own convenience, (2) was free to engage in other employment, (3) received fringe benefits, (4) was on the employer's payroll and (5) was on a fixed schedule" (*Bynog v Cipriani Group*, 1 NY3d 193, 198 [2003], *rearg denied* 2 NY3d 794 [2004]). Incidental control or general supervisory power over the work is insufficient (*Pander v Guildnet, Inc.*, 245 AD3d 521, 522 [1st Dept 2026]). The issue of control is ordinarily a question for the jury but "may properly be resolved as a matter of law where the evidence presents no conflict" (*Raben v Conde Nast Publs.*, 2 AD3d 117, 117 [1st Dept 2003]).

Applying these concepts, Pace has demonstrated its entitlement to summary judgment (*see Pander*, 245 AD3d at 522; *McLaughlan*, 149 AD3d at 520; *McCann v Varick Group LLC*, 84 AD3d 591, 591 [1st Dept 2011]). While a contract designating a party an independent

contractor is not dispositive, it is a factor to be considered (*Brielmeier v Leal*, 226 AD3d 955, 957 [2d Dept 2024]). Here, the Winfield Contract expressly states that Winfield is an independent contractor, all security guards are Winfield employees, and Winfield agreed to maintain workers' compensation coverage for employees assigned to Pace (NYSCEF Doc No. 89 at 2-3). Winfield employed Lane, set Lane's schedule, and paid and trained him (NYSCEF Doc No. 67, ¶¶ 25-26; NYSCEF Doc No. 45 at 54), and he reported to a shift supervisor employed by Winfield (NYSCEF Doc No. 45 at 17, 66). These factors weigh against finding that Pace exercised control over Winfield and Lane (*see Ceja v Posillico Civ., Inc.*, 244 AD3d 514, 514 [1st Dept 2025]; *Raja v Big Geyser, Inc.*, 144 AD3d 1123, 1124 [2d Dept 2016]), and establish that Winfield, not Pace, exercised significant control over Lane (*see Quik Park W. 57 LLC v Bridgewater Operating Corp.*, 148 AD3d 444, 445 [1st Dept 2017]).

Plaintiff fails to raise a triable issue. The site specific training materials and Pace's post orders and procedures "merely set[ ] forth guidelines that are not indicative of the control needed to establish an employer-employee relationship" (*Armacida v D.G. Neary Realty Ltd.*, 65 AD3d 984, 984 [1st Dept 2009]). That Pace approved whether a Winfield security guard could work at Pace and that a Pace security manager worked each shift (NYSCEF Doc No. 43 at 27, 33, 100-101) evinces only general supervisory control, which is insufficient (*see Smith v Pizza Hut of Am.*, 289 AD2d 48, 49 [1st Dept 2001]). There is also no evidence that a Pace employee responded to the incident. For these reasons, Pace is also entitled to dismissal of any cross-claims asserted against it by Winfield.

B. Pace's Contractual Indemnification Cross-Claim

Pace argues that it is entitled to contractual indemnification from Winfield based on a provision in Winfield Contract that states "[Winfield] agrees to hold harmless [Pace] and

[Pace's] Officers trustees, employees and agents from any claim or liability expense or loss including expense and attorney's fees arising out of the performance of … [Winfield]" (NYSCEF Doc No. 89 at 2). Winfield counters that it would be premature to grant summary judgment because Pace has not demonstrated its freedom from negligence.

Whether a party is entitled to contractual indemnification depends on the specific language in the parties' contract (*see Lam Pearl St. Hotel, LLC v. Anthony T. Rinaldi, LLC*, — AD3d —, 2026 NY Slip Op 01163, *1 [1st Dept 2026]). Pace has met its burden on summary judgment as the broad language in the provision at issue here "encompass[es] all liability arising in connection with [Winfield's] work" (*Izquierdo v Amsterdam Ave. Redevelopment Assoc., LLC*, 245 AD3d 468, 469 [1st Dept 2026]). Winfield fails to raise a triable issue in opposition.

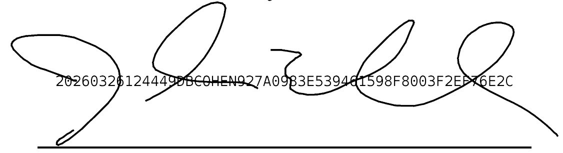
Accordingly, it is

ORDERED that defendant Pace University's motion for summary judgment dismissing the complaint and all cross-claims against it (motion sequence no. 001) is granted, and the complaint and cross-claims are severed and dismissed against said defendant, and the clerk is directed to enter judgment accordingly; and it is further

ORDERED that the part of the motion of defendant Pace University for summary judgment on its cross-claim for contractual indemnification against defendant Winfield Security Corporation is granted; and it is further

ORDERED that defendant Winfield Security Corporation's motion for summary judgment dismissing the complaint and the cross-claims against it (motion sequence no. 002) is granted to the extent of dismissing plaintiff's causes of action against it, and those causes of action are severed and dismissed, and the clerk is directed to enter judgment accordingly; and it is further

ORDERED as the only remaining defendant in this case is John Doe, and as the court record reflects that plaintiff never served Doe and his time to do so has expired, his claims against John Doe are dismissed, and the complaint is dismissed in its entirety.



3/26/2026		
DATE		DAVID B. COHEN, J.S.C.

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