Friends of Petrosino Sq. v Soho Hummus LLC
2026 NY Slip Op 31813(U)
April 28, 2026
Supreme Court, New York County
Docket Number: Index No. 155973/2021
Judge: Sabrina Kraus
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. SABRINA KRAUS** **PART** **57M**

Justice

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FRIENDS OF PETROSINO SQUARE, GEORGETTE FLEISCHER, CHRISTINE SPERRY, MARNA LAWRENCE, PAUL HALLASY

Plaintiffs,

- v -

SOHO HUMMUS LLC, EYAL HEN, FONTANA REALTY LLC, JOHN ILIBASSI, DAVID CHEN,

Defendants.

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INDEX NO. 155973/2021

MOTION DATE 12/24/2025, 12/26/2025

MOTION SEQ. NO. 008 009

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 008) 12, 64, 96, 287, 288, 289, 290, 291, 292, 293, 294, 295, 322, 323, 324, 325, 326, 327, 328, 329, 330, 343, 348, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 375

were read on this motion to/for SUMMARY JUDGMENT (AFTER JOINDER).

The following e-filed documents, listed by NYSCEF document number (Motion 009) 12, 96, 287, 288, 289, 290, 291, 292, 293, 294, 295, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 344, 349, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374

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

BACKGROUND

This action arose out of a fractious neighborhood dispute regarding the allegedly disruptive and unlawful conduct of Soho Hummus LLC ("Soho Hummus") wherein Plaintiffs seek, *inter alia*, a declaratory judgment, an injunction, and damages for intentional infliction of emotional distress and breach of the warranty of habitability.

FACTS

Georgette Fleischer ("Fleischer") and Marna Lawrence are residents of 19 Cleveland Place, New York NY 10012 ("19 Cleveland Place"). Their landlord is Fontana Realty LLC

("Fontana"), staffed by John Illibassi, Fontana's principal ("Illibassi"), and David Chen, the managing agent ("Chen"). Fleischer has lived in 19 Cleveland Place since 1979.

Soho Hummus is a commercial tenant of 19 Cleveland Place and operates a restaurant on the ground floor. Eyal Hen ("Hen") owns Soho Hummus.

Christine Sperry ("Sperry") is a resident of 21 Cleveland Place, and Paul Hallasy ("Hallasy") is a resident of 17 Cleveland Place. These plaintiffs' residences sit adjacent to the north and south of 19 Cleveland Place, respectively.

Friends of Petrosino Square is an unincorporated neighborhood association founded in 2005 as a neighborhood partner of New York City's Historic Districts Council (NYSCEF Doc No. 293, at 87).

The following information derives from Georgette Fleischer's testimony.

Flesicher met Hen in 2019 at a Community Board 2 meeting in which Hen sought to extend the hours of operation of Soho Hummus from 11:00 p.m. to 2:00 a.m. Fleischer opposed this extension, and at the meeting, she testified about an "unbearable" stench that would emanate from Soho Hummus when a contractor came to clean the grease out of exhaust fans at the restaurant. Hen told her that he would contact the contractor to remediate the issue. Fleischer testified that the cleaning nevertheless continues to happen once or twice a week and that the machinery causes a loud, droning noise (NYSCEF Doc No. 294, at 211).

The first conflict between Fleischer and Hen occurred in July 2020. At that time, the City of New York implemented an "open streets" program allowing restaurants to serve patients outdoors to reduce the risk of COVID. Approximately a week before open streets went into effect, Soho Hummus was constructing outdoor dining booths, and Fleischer estimated that the

booth was too close to a nearby fire hydrant. Fleischer took a picture of the booth whereafter she alleges that Hen approached her and began "harassing" her (NYSCEF Doc No. 294, at 223).

Weeks after this incident, Fleischer stated that she was returning to 19 Cleveland Place after a run when Hen leapt at her and began filming and yelling at her. Fleischer expressed concern that he yelled at her in close proximity without a mask during the pandemic.

Fleischer also alleged that Hen, who was also a residential tenant of 19 Cleveland Place, objected to her storing her daughter's umbrella stroller on the ground floor of 19 Cleveland Place, so he and other employees of Soho Hummus would repeatedly ring her apartment's buzzer to annoy and harass her.

On August 16, 2020, Fleischer again took a picture of Soho Hummus' placement of table and chairs on the sidewalk and street in front of 19 Cleveland Place. After watching her take the photo, Fleischer testified that Hen escalated the conduct by threatening Fleischer that he would report her New York City's Administration for Children Services ("ACS"). On September 11, 2020, Fleischer testified that an investigator from ACS notified her of an ACS investigation following a report, and the investigator later came to Fleischer's home and interviewed Fleischer and her daughter. The investigation was resolved without ACS taking any adverse action against Fleischer. Hen denies having made such a report (NYSCEF Doc No. 325, at 223–24), and Fleischer otherwise has no direct knowledge that Hen made the report.

Another time, Fleischer was again taking a picture of Soho Hummus' setup of tables and booths in the roadway, and she alleges that Hen and another employee came "charging" after her with "arms akimbo" as if to snatch her phone (NYSCEF Doc No. 295, at 465).

Fleischer also alleged Hen and his employees served alcohol outdoors on the sidewalk without a permit (NYSCEF Doc No. 294, at 271). Another time, Fleischer was outdoors

measuring the space at which tables were situated on the sidewalk with a tape measure when one of Hen's employees came outside and yelled at her (*id.* at 272–73).

Since 2020, Fleischer has been withholding rent from Fontana for what she describes as the disruptive and harassing behavior of Hen and Soho Hummus (*id.* at 293). Fleischer also claims that the Landlord Defendants and the Restaurant Defendants have been acting in concert in a campaign of "harassment by proxy" wherein Ilibassi directed Hen harass her such that she would leave her rent-stabilized apartment (NYSCEF Doc No. 295, at 454). Fleischer's apparent basis for this belief was an email written by Ilibassi stating that he wished she would live somewhere else (*id.* at 455).

The following information derives from the testimony of Marna Lawrence.

Lawrence, another resident of 19 Cleveland Place, alleges that after Soho Hummus became the commercial tenant at 19 Cleveland Place, it began putting out large amounts of garbage on the sidewalk near the front of the street (NYSCEF Doc No. 290, at 220–22). These garbage bags apparently created a rodent problem (NYSCEF Doc No. 292, at 598). Lawrence also testified that Soho Hummus, whose kitchen was directly beneath her apartment, caused excessive noise both from the kitchen activities and from the alleyway next to 19 Cleveland Place (NYSCEF Doc No. 291, at 287). The noise emanated from both garbage removal operations (*id.* at 291) and "club-style music" (*id.* at 309). Lawrence further testified that Hen, in his next-door residence, would harass her with "noise torture on a daily basis" by playing loud music next to their apartments' shared wall (*id.* at 545–46). Hen no longer lives at 19 Cleveland Place as of February 2025 (NYSCEF Doc No. 326, at 5).

The following information derives from Christine Sperry's testimony.

Christine Sperry, a resident of 21 Cleveland Place, testified that staff of Soho Hummus would regularly pile garbage bags in front of the door to her apartment building and also between the dining sheds that were outside the building (NYSCEF Doc No. 287, at 95; NYSCEF Doc No. 288, at 249). Sperry also has called the police on Soho Hummus due to excessive noise coming out of the restaurant late at night (*id.* at 177). Sperry testified that Hen and his friends would harass her by sometimes sitting outside of the restaurant and laughing or pointing at her (*id.* at 246). Sperry also one time witnessed Hen blocking Fleischer from entering 19 Cleveland Place and she believed that he raised his hand as though he intended to strike her (*id.* at 247–48).

The following information derives from Paul Halassy's testimony.

Halassy, a resident of 17 Cleveland Place, testified that he became aware of Soho Hummus only after he was contacted by Fleischer about the Community Board 2 meeting over Soho Hummus' operating hours (NYSCEF Doc No. 289, at 70, 92). Halassy's noise complaint about Soho Hummus amounted to a "one-time" issue with noise but that he was "not exactly sure" where it was coming from (*id.* at 57, 93). Halassy also speculated that Soho Hummus could have been improperly operating as a nightclub because there were people congregating outside the restaurant who were dressed very nicely (*id.* at 109–10). Halassy testified that he had never been harassed by anyone from Soho Hummus or Fontana (*id.* at 117).

RELEVANT PROCEDURAL HISTORY

On December 10, 2021, the Court (Kelly, J.S.C.) issued an injunction enjoining Defendants from, *inter alia*, harassing the Plaintiffs, playing unreasonably loud music during operating hours, permitting restaurant patrons to block the sidewalks or residential entrances and permitting restaurant employees to play unreasonably loud music (NYSCEF Doc No. 96).

PENDING MOTIONS

On January 26, 2026, Soho Hummus and Eyal Hen (the "Restaurant Defendants") moved for (1) an order pursuant to CPLR § 3212 granting summary judgment dismissing Plaintiffs' complaint as against them, (2) an order pursuant to CPLR § 6314 vacating the December 10, 2021, preliminary injunction and (3) setting the matter down for a hearing to determine the defendants' reasonable damages in connection with the preliminary injunction (NYSCEF Doc No. 322 [mot. seq. 008]).

On January 26, 2026, Fontana Realty LLC, John Ilibassi and David Chen (the "Landlord Defendants") moved for an order pursuant to CPLR § 3212 granting summary judgment dismissing Plaintiffs' complaint as against them (NYSCEF Doc No. 331 [mot. seq. 009]).

The motions were marked submitted on March 30, 2026, and the Court reserved decision.

Plaintiffs did not timely file opposition as their submissions were filed on April 2, 2026, in violation of the parties' stipulation extending the filing date for opposition to February 23, 2026 (NYSCEF Doc Nos. 343, 344).

The Court grants the Restaurant Defendants' motion as they made a *prima facie* case for dismissal of the Plaintiffs' first, second and third causes of action, but the Court denies the motion to set the matter down for a hearing as to damages.

The Court also grants the Landlord Defendants' motion dismissing the complaint as to Friends of Petrosino Square and dismissing the fourth and fifth causes of action as to Christine Sperry and Paul Halassy for lack of standing. Finally, the Court grants the Landlord Defendants' motion as to dismissing the first three causes of action as against them by the remaining Plaintiffs.

DISCUSSION

Summary judgment is a drastic remedy reserved for cases where no material and triable issue of fact is presented (*Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 [1957]). To prevail on summary judgment, the movant must establish *prima facie* entitlement to judgment as a matter of law, tendering evidence in admissible form demonstrating the absence of any triable issues of fact (CPLR § 3212(b); *Matter of New York City Asbestos Litig.*, 33 NY3d 20, 25–26 [2019]). A defendant's initial burden on summary judgment cannot be satisfied by "merely point[ing] to perceived gaps" in the plaintiff's proof "rather than submitting evidence showing why" the plaintiff's claim fail (*Matter of New York City Asbestos Litig.*, 174 AD3d 461, 461 [1st Dept 2019] [alteration in original]). Failure to make such a showing requires denial of the motion "regardless of the sufficiency of the opposing papers" (*Winegrad v N.Y. Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]).

An unopposed motion for summary judgment will be denied either upon a movant's failure to establish a *prima facie* case or "where the evidence creates a question of fact" (*Yonkers Ave. Dodge, Inc. v BZ Results, LLC*, 95 AD3d 774, 774–75 [1st Dept 2012]). Courts view the evidence in a light most favorable to the nonmovant and accord the nonmovant "the benefit of every reasonable inference" (*Negri v Stop & Shop, Inc.*, 65 NY2d 625, 626 [1985]).

The Restaurant Defendants Establish a Prima Facie Case for Dismissal of the First and Second Causes of Action

The Restaurant Defendants first argue that the Court lacks subject matter jurisdiction to adjudicate Plaintiffs' first cause of action as it improperly seeks judicial enforcement of regulatory statutes and codes of New York City and State.

CPLR § 3001 provides:

The supreme court may render a declaratory judgment having the effect of a final

> judgment as to the rights and other legal relations of the parties to a justiciable controversy whether or not further relief is or could be claimed.

A declaratory judgment requires that (1) there exist a justiciable controversy between the parties in which the plaintiff has "an interest sufficient to constitute standing to maintain the action" and also (2) "the controversy involve present, rather than hypothetical, contingent or remote, prejudice to" the plaintiff (*Touro Coll. v Novus Univ. Corp.*, 146 AD3d 679, 680 [1st Dept 2017]). Plaintiffs' complaint fails to state any cause of action that would warrant a declaratory judgment, only stating under the first cause of action that:

> 109. Plaintiffs reallege each and every one of the foregoing allegations as though more fully set forth herein.
>
> 110. By virtue of the facts recited above, Plaintiffs are entitled to a declaratory judgment against Defendants, jointly and severally, declaring that Defendants' actions, set forth above, *are in violation of the law* and awarding monetary damages to the Plaintiffs, including punitive and exemplary damages and for other and further relief as may be just.
>
> (NYSCEF Doc No. 12).

There is absolutely no basis for the Court to issue a declaratory judgment under Plaintiffs' barebones, two-paragraph cause of action for a declaratory judgment. Plaintiffs fail to state which facts support the basis for violations of what provision of any particular law, which would entitle Plaintiffs to what specific amount of damages. The Court accordingly dismisses the first cause of action as to both the Restaurant Defendants and the Landlord Defendants (*see Roosevelt Lee 38 LLC v Born Star Am. Corp.*, 235 AD3d 458, 459 [1st Dept 2025] [*affirming summary judgment dismissing plaintiff's complaint even when discovery later revealed facts that could support such a claim*]).

The Restaurant Defendants Establish a Prima Facie Case that Plaintiffs' Third Cause of Action for Intentional Infliction of Emotional Distress Fails as a Matter of Law

The Restaurant Defendants argue that Plaintiffs' third cause of action for intentional

infliction of emotional distress ("IIED") fails because Plaintiffs never provided Defendants' with HIPAA-compliant authorizations and Defendants' conduct was neither extreme nor outrageous.

The claim has four elements: (1) extreme and outrageous conduct, (2) intent to cause severe emotional distress, (3) severe emotional distress and (4) a causal connection between the conduct and the severe emotional distress (*Chanko v American Broadcasting Cos. Inc.*, 27 NY3d 46, 56 [2016]). The emotional distress must be supported by medical evidence and "not the mere recitation of speculative claims" (*Walentas v Johnes*, 257 AD2d 352, 353 [1st Dept 1999]). The Restaurant Defendants aver on this motion that not one Plaintiff has provided them with HIPAA-compliant authorizations to obtain medical records documenting the severity of their emotional distress (NYSCEF Doc No. 330, at 15). That is dispositive here and adequate grounds for dismissal on summary judgment (*see Walentas*, 257 AD2d 352, 353).

In any event, Plaintiffs' testimony also supports the fact that they did not experience severe emotional distress. Marna Lawrence testified that the alleged harassment and her frustration with the noise caused her blood pressure to rise (NYSCEF Doc No. 292, at 726). However, this is not an emotional condition, and she also testified that she had not seen a psychologist or a psychiatrist in connection with the ailment (*id.* at 727). Christine Sperry testified that she experienced anxiety but that there was no medical documentation regarding whether the Defendants' conduct caused that anxiety (NYSCEF Doc No. 288, at 211–12). Paul Hallasy did not testify to any emotional distress (*see* NYSCEF Doc No. 289). Fleischer testified that she had *once* seen an outpatient psychiatrist but she nevertheless not provide Defendants with HIPAA-compliant authorizations for these records (NYSCEF Doc No. 294, at 284–85).

Assuming *arguendo* the Plaintiffs documented severe emotional distress, which they did not, the Restaurant Defendants alleged conduct was not sufficiently extreme or outrageous.

Whether a defendant's conduct satisfies the requisite outrageousness of an IIED claim is "an issue of law for judicial determination" (*164 Mulberry St. Corp. v Columbia Univ.*, 4 AD3d 49, 56 [1st Dept 2004]). The conduct 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" (*Howell v New York Post Co.*, 81 NY2d 115, 122 [1993]; *see also* Restatement [Second] of Torts § 46, Comment *d*). "Mere threats, annoyance or other petty oppressions, *no matter how upsetting*" are insufficient to sustain the claim (*Owen v Leventritt*, 174 AD2d 471, 472 [1st Dept 1991] [emphasis added]). Sufficient outrageousness may be found through a "deliberate and malicious campaign of harassment or intimidation" rather than a single instance of offending misconduct (*Nader v General Motors Corp.*, 25 NY2d 560, 569 [1970]). However, courts are wary to sustain an IIED claim for a harassment campaign when "the conduct complained of falls well within the ambit of other traditional tort liability" (*Fischer v Maloney*, 43 NY2d 553, 557–58 [1978]).

In *Xu v He*, the Third Department vacated an award of damages for IIED when the plaintiff's complaint incorporated the allegations for abuse of process and libel as the basis for the IIED claim (147 AD3d 1223, 1226 [3d Dept 2017]). Much of Plaintiffs' allegations—the excessive noise, restaurant patrons' blocking of their ingress and egress, excessive refuse and buzzing their apartments—could support a claim for nuisance, which was unpleaded (*see Copart Indus., Inc. v Consolidated Edison Co.*, 41 NY2d 564, 569 [1977] [*nuisance claim may arise from negligent, reckless or intentional misconduct*]). Allegations that Hen and his employees charged at Fleischer without making physical contact could support a claim of assault, which was also unpleaded (*see Berg v Chelsea Hotel Owner, LLC*, 203 AD3d 484, 486 [1st Dept 2022] [*assault is a menacing physical act that causes apprehension of imminent bodily harm*]).

Moreover, the Restaurant Defendants establish that the bulk of the complained of conduct was not extreme or outrageous. Taken together, the Plaintiffs' allegations of the Restaurant Defendants' conduct amount to an acrimonious but unremarkable neighborhood dispute. Of the times that Fleischer alleges harassment by the Restaurant Defendants, she usually was taking pictures of their outdoor setup or attempting to document their alleged code violations. While this alleged ongoing harassment could be described as rude, annoying or even hostile, the conduct does not rise to the level of extremity required for IIED (*compare Owen v Leventritt*, 174 AD2d 471, 472 [1st Dept 1991] [*affirming dismissal of IIED claim where pregnant plaintiff was told that defendant threatened to kill her at public cooperative meeting*], *and Davydov v Youssefi*, 205 AD3d 881, 883 [2d Dept 2022] [*shouting insults and threats at plaintiff insufficient to sustain IIED claim*], *and Fischer v Maloney*, 43 NY2d 553, 557–58 [1978] [*alleged malicious prosecution of a defamation claim insufficient to form basis of IIED claim*], *with Waterybury v New York City Ballet, Inc.*, 205 AD3d 154, 165 [1st Dept 2022] [*reversing dismissal of IIED claim for allegations that defendants recorded intimate images of plaintiff and disseminated them without her knowledge and consent*], *and Nader v General Motors Corp.*, 25 NY2d 560, 569–70 [1970] [*allegations of persistent campaign of surveillance and intimidation of plaintiff by private investigators involving unauthorized wiretapping and conspicuous stalking was outrageous*]). Furthermore, "New York does not recognize a common-law cause of action for harassment" (*Garza v Nunz Realty, LLC*, 187 AD3d 467, 468 [1st Dept 2020]).

The only conduct that could be described as extreme or outrageous is Hen's alleged false report to ACS. However, Fleischer alleged that she only believed that Hen made the report while Hen directly denied having made it (NYSCEF Doc No. 325, at 223–24). Fleischer never produced ACS records over the course of discovery that would have confirmed or disconfirmed

that Hen was indeed the one to have made the report. Her speculative belief is thus insufficient to rebut the Restaurant Defendants' *prima facie* case for dismissal of the IIED claim (*see Foy v Hurley*, 19 AD3d 138, 138 [1st Dept 2005] [*reversing denial of summary judgment on the basis that the plaintiff's lack of knowledge of an accident was insufficient to raise a triable issue of fact against the defendant's prima facie case*]; *see also Santarpia v First Fid. Leasing Group, Inc.*, 275 AD2d 315, 315 [2d Dept 2000] [*testimony as to the lack of memory of the details of an accident insufficient to raise a triable issue of fact rebutting inference of negligence*]).

Accordingly, the Court grants the Restaurant Defendants' motion as they establish a *prima facie* case that there are no triable issues related to Plaintiffs' IIED claim.

The Court Grants the Restaurant Defendants' Motion to Vacate the Injunction and to Dismiss the Second Cause of Action

CPLR § 6314 provides:

> A defendant enjoined by a preliminary injunction may move at any time, on notice to the plaintiff, to vacate or modify it. On motion, without notice, made by a defendant enjoined by a temporary restraining order, the judge who granted it, or in his absence or disability, another judge, may vacate or modify the order. An order granted without notice and vacating or modifying a temporary restraining order shall be effective when, together with the papers upon which it is based, it is filed with the clerk and served upon the plaintiff. As a condition to granting an order vacating or modifying a preliminary injunction or a temporary restraining order, a court may require the defendant, except where the defendant is a public body or officer, to give an undertaking, in an amount to be fixed by the court, that the defendant shall pay to the plaintiff any loss sustained by reason of the vacating or modifying order.

A motion to vacate a preliminary injunction "is addressed to the sound discretion of the court" and may be granted "either upon compelling or changed circumstances that render continuation of the injunction inequitable" (*Wellbilt Equip. Corp. v Red Eye Grill, L.P.*, 308 AD2d 411, 411 [1st Dept 2003]). However, "injunctive relief is simply not available when the plaintiff does not have any remaining substantive cause of action against those defendants" (*Weinreb v 37 Apts. Corp.*, 97 AD3d 54, 59 [1st Dept 2012]).

Plaintiffs' second cause of action is for an "Injunction" which seeks to enjoin Defendants from violating a smorgasbord of statutory, regulatory and common-law provisions. In light of the Court's dismissal of Plaintiffs' first and third causes of action, the Court dismisses Plaintiffs' second cause of action for an injunction as against the Restaurant Defendants as there is no "remaining substantive cause of action against" the Restaurant Defendants (*see Weinreb*, 97 AD3d 54, 59).

Even if the Plaintiffs were entitled to an injunction from any of those legal theories listed under the second cause of action, Plaintiffs never actually pleaded the elements of any of those legal theories nor did they state what type of injunction to which they were entitled (*see* NYSCEF Doc No. 12). This scattergun approach is wholly inappropriate to state a claim for an injunction.

The Landlord Defendants Establish a Lack of Standing as to the Plaintiffs Below

The Landlord Defendants argue that Friends of Petrosino Square ("Friends") has no standing to assert any causes of action in the Plaintiffs' complaint because Friends cannot demonstrate that it suffered a particularized injury or is within the zone of interests protected by the statutes as the bases for these three causes of action.

For associational or organizational standing, an association must meet three requirements:

> *First*, if an association or organization is the petitioner, the key determination to be made is whether one or more of its members would have standing to sue; standing cannot be achieved merely by multiplying the persons a group purports to represent. *Second*, an association must demonstrate that the interests it asserts are germane to its purposes so as to satisfy the court that it is an appropriate representative of those interests. *Third*, it must be evident that neither the asserted claim nor the appropriate relief requires the participation of the individual members. (*Society of Plastics Indus. v County of Suffolk*, 77 NY2d 761, 775 [1991], citing *Matter of Dental Soc'y v Carey*, 61 NY2d 330, 330 [1984]).

These requirements ensure that "the requisite injury is established and that the organization is the proper party to seek redress for that injury" (*Saratoga County Chamber of Commerce, Inc. v Pataki*, 275 AD2d 145, 155 [3d Dept 2000]).

Landlord Defendants establish that both the asserted claims and the appropriate relief under any of the causes of action would require participation of individual members of Friends. Plaintiffs' complaint states that Fleischer and Sperry, two of the individual plaintiffs, are Friends' president and treasurer (NYSCEF Doc No. 12 ¶¶ 3, 6). However, the bases for the first, second and third causes of action lie in the defendants' alleged conduct *against the individual plaintiffs* (*id.* ¶ 18 ["This action arises from the persistent and ongoing harassment and abuse *of the individual Plaintiffs by Defendants*"] [emphasis added]). For example, the complaint alleges that defendant Hen "repeatedly charges straight at Fleischer when she is entering or leaving" her residence (*id.* ¶ 66). Hen and his employees would allegedly "terrorize" Lawrence by playing loud music and slamming doors "in an attempt to drive her from her home" (*id.* ¶ 76). Hen once allegedly made a threatening comment to Sperry (*id.* ¶ 92). This allegedly offending conduct would require the individual participation of Friends' members in the suit, and none of this conduct is alleged to be specifically directed at Friends as an association or to have occurred at Friends' principal place of business.[1]

Furthermore, the fourth cause of action for breach of the warranty of habitability requires a landlord tenant relationship and the fifth cause of action for legal fees requires the existence of a residential lease between an individual plaintiff and a landlord (*see Bykovtseva v DTH Capital, Inc.*, 239 AD3d 476, 477 [1st Dept 2025]). The participation of the individual Plaintiffs would be required to prosecute these causes of action.

[1] Plaintiffs' complaint states that Friends is unincorporated, which suggests that it does not have a principal place of business (NYSCEF Doc No. 12 ¶ 2).

The Landlord Defendants thus demonstrate that each cause of action within Plaintiffs' complaint requires the participation of the individual plaintiffs such that Friends lacks standing to maintain this action (*see Society of Plastics Indus.*, 77 NY2d at 775). The Court accordingly dismisses the complaint as to plaintiff Friends of Petrosino Square.[2]

The Landlord Defendants further argue that Paul Hallasy and Christine Sperry lack standing to maintain the fourth and fifth causes of action as against them because these plaintiffs do not reside at 19 Cleveland Place.

To establish statutory standing, a plaintiff must demonstrate that (1) they suffered a particularized injury-in-fact and (2) the asserted injury is within the zone of interests sought to be protected by the statute alleged to have been violated (*Matter of Assn. for a Better Long Is., Inc. v New York State Dept. of Envtl. Conservation*, 23 NY3d 1, 6 [2014]).

The fourth and fifth causes of action in Plaintiffs' complaint for a breach of the warranty of habitability and for legal fees in the prosecution of this action are asserted only against the Landlord Defendants and not the Restaurant Defendants. The warranty of habitability codified in Real Property Law § 235-b requires landlords of a residential premises to adhere to three covenants:

> (1) that the premises are fit for human habitation, (2) that the premises are fit for the uses reasonably intended by the parties, and (3) that the occupants will not be subjected to conditions that are dangerous, hazardous or detrimental to their life, health or safety. (*Solow v Wellner*, 86 NY2d 582, 587–88 [1995], citing Real Property Law § 235-b).

[2] Even if this action did not require the participation of the individual Plaintiffs, Friends' maintenance of the suit is also not "germane to [Friends'] purposes so as to satisfy the court that it is an appropriate representative of those interests" (*Society of Plastics Indus.*, 77 NY2d at 775). Fleischer testified that Friends does not have a formal mission statement (NYSCEF Doc No. 293, at 92). Without a formal statement, Friends has no sufficient purpose. Moreover, Halassy was not even a member of Friends (NYSCEF Doc No. 289, at 65).

The Landlord Defendants establish that Paul Hallasy and Christine Sperry do not have standing to maintain the warranty of habitability claim because they have no landlord tenant relationship with the Landlord Defendants. Said plaintiffs are thus outside the zone of interests sought to be protected by Real Property Law § 235-b. The Landlord Defendants also establish that these plaintiffs have no standing to assert the fifth cause of action for legal fees as the sole basis for that claim is Plaintiffs' having "leases that contain legal fee clauses" (NYSCEF Doc No. 12, at 13 ¶ 128).

Accordingly, the Court grants Landlord Defendants' motion dismissing the fourth and fifth causes of action as to plaintiffs Paul Hallasy and Christine Sperry as the Landlord Defendants made a *prima facie* case that said plaintiffs lack standing to assert those claims and Plaintiffs file no opposition to the motion.

The Landlord Defendants Establish that Plaintiffs' First and Second Causes of Action Fail as Against Them as a Matter of Law

The Landlord Defendants also establish a *prima facie* case that the first three causes of action should be dismissed as against them as to the remaining Plaintiffs.

Before addressing the Landlord Defendants' arguments as to each cause of action, the Court starts with Plaintiffs' theory of liability as to the Landlord Defendants. Plaintiffs did not plead a cause of action sounding in negligence as against the Landlord Defendants. Under this cause of action, the Landlord Defendants could have been liable for the Restaurant Defendants' unlawful conduct had they known or had reason to know of the likelihood of unlawful conduct from past experience and failed to take protective action to remediate that harm (*see e.g. Nallan v Helmsley-Spear, Inc.*, 50 NY2d 507, 519 [1980]). Rather, Plaintiffs' complaint alleges that Landlord Defendants are liable for the *intentional* misconduct of the Restaurant Defendants because "the actions of Hen and Soho Hummus are at the behest of and in collusion with the

Landlord Defendants" (NYSCEF Doc No. 12 ¶ 71). However, the Landlord Defendants cannot be vicariously liable for alleged "collusion" as civil conspiracy is not a recognized tort in New York (*Mamoon v Dot Net Inc.*, 135 AD3d 656, 658 [1st Dept 2016]).

The only theory under which the Landlord Defendants could be liable for the intentional wrongdoing of the Restaurant Defendants is the theory that the Restaurant Defendants acted "at the behest of" the Landlord Defendants under a theory of concerted action. Concerted action theory imposes liability upon "those who, in pursuance of a common plan or design to commit a tortious act, actively take part in it, or further it by cooperation or request, or who lend aid or encouragement to the wrongdoer, or ratify and adopt [the wrongdoer's] acts done for their benefit" (*Bichler v Eli Lilly & Co.*, 55 NY2d 571, 580 [1982]).

The Landlord Defendants establish a *prima facie* case that there was no unlawful common plan or design to secretly harass and annoy Fleischer to make her leave her apartment. Regarding noise violations, Ilibassi testified that if he received a noise complaint from the police, he would communicate that complaint to Hen (NYSCEF Doc No. 327, at 82–83). Hen also testified that Ilibassi had tried to mediate the situation between the restaurant and Plaintiffs by asking him to lower the music such that Plaintiffs would cease making noise complaints (NYSCEF Doc No. 325, at 227). While Fleischer believed that there was a secret "harassment by proxy" campaign against her, she testified that the only documentary evidence in support of this belief was that Ilibassi once sent her an email wherein he stated that he wished she would move elsewhere (NYSCEF Doc No. 295, at 455 ["I think that Ilibassi hopes that it will become so intolerable that I will finally just leave"]). This unsubstantiated allegation or assertion is insufficient to overcome the Landlord Defendants' *prima facie* case (*see Justinian Capital SPC v*

WestLB AG, 28 NY3d 160, 168 [2016]). Accordingly, the Court dismisses the first two causes of action as against the Landlord Defendants.

Finally, the Landlord Defendants establish that they committed no overt act rising to the level of extremity or outrageousness required to support an IIED claim. Hallasy testified that he did not know any of the Landlord Defendants nor had any of them harassed or "bullied" him (NYSCEF Doc No. 339, at 117–18). Hallasy also testified that no one associated with the Landlord Defendants ever interfered with his quality of life (*id.* at 119). Christine Sperry testified that she had no interaction with the Landlord Defendants nor was she harassed by any of them (*id.* at 218–19). Finally, Georgette Fleischer testified that John Ilibassi never verbally harassed her and that David Chen's harassment amounted to him mocking her in her apartment when he followed up on her complaint about the sink (NYSCEF Doc No. 340, at 484–86). The Landlord Defendants thus make a *prima facie* case for the dismissal of the third cause of action for IIED as they demonstrate that they committed no sufficiently outrageous conduct (*Howell v New York Post Co.*, 81 NY2d 115, 121 [1993] ["The first element—outrageous conduct—serves the dual function of filtering out petty and trivial complaints that do not belong in court, and assuring that plaintiff's claim of severe emotional distress is genuine"]).

Accordingly, the Court grants the Landlord Defendants' motion and dismissed the first three causes of action as against them.

The Landlord Defendants Fail to Eliminate Triable Issues of Fact as to the Fourth and Fifth Causes of Action

The Landlord Defendants further argue that they cannot be held liable for a breach of the warranty of habitability for the conduct of the Restaurant Defendants.

The duties imposed upon the landlord by Real Property Law § 235-b continue when the conditions causing the premises to be uninhabitable are caused by the conduct of a third party

and when "the landlord is vested with the ultimate control and responsibility for the building" (*Park W. Mgt. Corp. v Mitchell*, 47 NY2d 316, 327 [1979]). A landlord may breach the warranty of habitability for the failure to take effective steps to abate conduct of a third party, including where it is asserted the third party generated excessive noise (*see Nostrand Gardens Co-Op v Howard*, 221 AD2d 637, 638 [2d Dept 1995]). While the Landlord Defendants argue unpersuasively that none of the alleged noise or refuse intrusions "was attributable to the Landlord Defendants," they fail to establish a *prima facie* case that they disclaimed the ultimate control or responsibility over the noise and refuse conditions caused by the Restaurant Defendants (NYSCEF Doc No. 335, at 20). Indeed, the Landlord Defendants attached the wrong commercial lease in support of their motion for the previous commercial tenant and not for the Restaurant Defendants (*see* NYSCEF Doc No. 342).

Equally unavailing is the argument that the Plaintiffs' allegations regarding the Restaurant Defendants' intrusive conduct is insufficient to support a breach of the warranty of habitability as there is conflicting evidence as to whether the Restaurant Defendants' conduct "did not substantially and unreasonably interfere with [Plaintiffs'] use and enjoyment of [their] leasehold" (*see 127 Rest. Corp. v Rose Realty Group, LLC*, 19 AD3d 172, 173 [1st Dept 2005]). Various Plaintiffs allege that the excessive noise from the operation of Soho Hummus interfered with their ability to sleep at night and also caused noxious smells and fumes. The credibility of these allegations and the extent to which they interfered with the Plaintiffs' proprietary rights are thus for the finder of fact to assess at trial.

CONCLUSION

Accordingly, it is hereby:

ORDERED that the motion of the Restaurant Defendants (mot. seq. 008) is granted to the extent that they are entitled to summary judgment dismissing the complaint as against them, and the injunction is vacated; and it is further

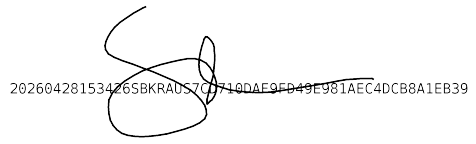
ORDERED that the motion of Landlord Defendants (mot. seq. 009) is granted to the extent that the complaint is dismissed as to Friends of Petrosino Square; the fourth and fifth causes of action are dismissed as to Paul Halassy and Christine Sperry; the first, second, and third causes of action are dismissed as to all Plaintiffs; the injunction is lifted; but the motion is otherwise denied; and it is further

ORDERED that the Clerk of the Court is directed to amend the caption to reflect that Friends of Petrosino Square, Paul Halassy and Christine Sperry are no longer a parties to the action; and it is further

ORDERED that, within twenty (20) days from entry of this order, the Restaurant Defendants shall serve a copy of this order with notice of entry on the Clerk of the General Clerk's Office (60 Centre Street, Room 119, New York, NY 10007); and it is further

ORDERED that such service upon the Clerk shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh).

This constitutes the decision and order of this Court.



4/28/2026
DATE

SABRINA KRAUS, J.S.C.

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