UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

JANE DOE, Plaintiff, v. SEAN COMBS; HARVE PIERRE; THE THIRD ASSAILANT; DADDY'S HOUSE RECORDINGS, INC. and BAD BOY ENTERTAINMENT HOLDINGS, INC., Defendants.	:	Civil Action No. 23-cv-10628 (JGLC) **NOTICE OF MOTION**

PLEASE TAKE NOTICE that upon this Notice of Motion, dated as of May 10, 2024, and the accompanying Declaration of Jonathan D. Davis, dated May 10, 2024, with exhibits, and the supporting memorandum of law, dated May 10, 2024, and upon all prior proceedings had herein, Defendants Sean Combs, Daddy's House Recordings, Inc., and Bad Boy Entertainment Holdings, Inc., by their attorneys, will move this Court, pursuant to Fed. R. Civ. P. 12(b)(6), before the Honorable Jessica G. L. Clarke, at the United States District Courthouse, Courtroom 20C, 500 Pearl Street, New York, New York 10007, for an order dismissing Plaintiff's Amended Complaint [Dkt. No. 52] with prejudice.

Answering declarations and memoranda of law, if any, shall be filed on or before Friday, June 7, 2024, and any reply declarations and memoranda of law shall be filed on or before Friday, June 21, 2024, unless otherwise extended by the Court.

Dated: May 10, 2024
New York, New York

JONATHAN D. DAVIS, P.C.

By: */s/ Jonathan D. Davis*

Jonathan D. Davis
Anthony C. LoMonaco
1 Rockefeller Plaza
Suite 1712
New York, New York 10020
(212) 687-5464

Attorneys for Defendants Sean Combs, Daddy's House Recordings, Inc., and Bad Boy Entertainment Holdings, Inc.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

JANE DOE, Plaintiff, v. SEAN COMBS; HARVE PIERRE; THE THIRD ASSAILANT; DADDY'S HOUSE RECORDINGS, INC. and BAD BOY ENTERTAINMENT HOLDINGS, INC., Defendants.	Civil Action No. 23-cv-10628 (JGLC) **DECLARATION OF JONATHAN D. DAVIS IN SUPPORT OF MOTION TO DISMISS AMENDED COMPLAINT**

JONATHAN D. DAVIS declares as follows:

1. I am the sole shareholder of Jonathan D. Davis, P.C., attorneys for Defendants Sean Combs, Daddy's House Recordings, Inc., and Bad Boy Entertainment Holdings, Inc. (the "Combs Defendants").

2. I submit this declaration in support of the Combs Defendants' motion under Fed. R. Civ. P. 12(b)(6) for an order dismissing the Amended Complaint [Dkt. No. 52] with prejudice.

3. Attached as Exhibit A is a true and correct copy of a redline copy of the Amended Complaint [Dkt. No. 52-1], showing the amendments to the Complaint [Dkt. No. 1].

4. Attached as Exhibit B is a true and correct copy of the Order, dated March 7, 2024, issued by the Court in *Bellino v. Tallarico*, No. 1:24-cv-00712 (LAK) (S.D.N.Y) [Dkt. No. 14], denying plaintiff's motion for reconsideration.

5. Attached as Exhibit C is a true and correct copy of the Memorandum Endorsement, dated April 26, 2024, in *Bellino v. Tallarico*, No. 1:24-cv-00712 (LAK) (S.D.N.Y) [Dkt. No. 28], denying plaintiff's motion for leave to amend her complaint.

6. Attached as Exhibit D is a true and correct copy of an excerpt of the New York City Council's Legislation Text for Introduction No. 1012-A, Local Law No. 2018/063, which provides, *inter alia*, the N.Y.C. Admin. Code § 10-1104, effective prior to January 9, 2022.

7. Attached as Exhibit E is a true and correct copy of the New York City Council's Legislation Text for Introduction No. 2372-B, Local Law No. 2022/021, which provides, *inter alia*, the N.Y.C. Admin. Code § 10-1104, effective as of January 9, 2022.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed at New York, New York, on this 10th day of May 2024.

/s/ Jonathan D. Davis
JONATHAN D. DAVIS

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

JANE DOE, Plaintiff, v. SEAN COMBS; HARVE PIERRE; THE THIRD ASSAILANT; DADDY'S HOUSE RECORDINGS, INC. and BAD BOY ENTERTAINMENT HOLDINGS, INC., Defendants.	Civil Action No. 23-cv-10628 (JGLC) **ORAL ARGUMENT REQUESTED**

MEMORANDUM OF LAW
IN SUPPORT OF MOTION TO DISMISS
AMENDED COMPLAINT AGAINST THE COMBS DEFENDANTS

JONATHAN D. DAVIS, P.C.
1 Rockefeller Plaza
Suite 1712
New York, New York 10020
(212) 687-5464

Attorneys for Defendants Sean Combs, Daddy's House Recordings, Inc., and Bad Boy Entertainment Holdings, Inc.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

This memorandum of law is respectfully submitted on behalf of Defendants Sean Combs ("Mr. Combs"), Daddy's House Recordings, Inc. ("DHR"), and Bad Boy Entertainment Holdings, Inc. ("BBE" and DHR are collectively the "Corporate Defendants") in support of their motion under Fed. R. Civ. P. 12(b)(6) for an order dismissing the Amended Complaint [Dkt. No. 52] (the "FAC") with prejudice.[1]

PRELIMINARY STATEMENT

This is Plaintiff's second attempt to state an entirely false and hideous claim against the Combs Defendants under New York City's Victims of Gender-Motivated Violence Protection Law. N.Y.C. Admin. Code §§ 10-1101 *et seq.* (the "VGM").[2] At the top of Plaintiff's pleading is a bolded, legally irrelevant "trigger warning" calculated to focus attention on its salacious and depraved allegations. This stunt is intended to prominently showcase a baseless and time-barred claim, which was designed to cause the Combs Defendants unwanted publicity, embarrassment, and financial costs, so Plaintiff could extract an undeserved financial recovery from them.

The sparse amendments to the original Complaint cannot remedy the falsehoods and incurable defects in the new pleading. Like the original Complaint, it fails to state any viable claim and must be dismissed.[3] Mr. Combs and his companies categorically deny Plaintiff's decades-old tale against them, which has already caused incalculable damage to the reputations and business

[1] This memorandum of law is accompanied by the Declaration of Jonathan D. Davis, dated May 10, 2024 ("Davis Decl."), together with exhibits. BBE, DHR, and Mr. Combs are referred to herein as the "Combs Defendants." Mr. Combs and Defendant Harve Pierre ("Mr. Pierre"), along with the Defendant Third Assailant, are collectively referred to as the "Individual Defendants."

[2] Plaintiff brought this action using a pseudonym, and belatedly sought the Court's permission to do so. [Dkt. Nos. 14-16.] Defendants opposed that relief [Dkt. No. 30] and, on February 29, 2024, the Court denied Plaintiff such relief, and ordered that, if the action proceeds, she must proceed using her legal name. Order [Dkt. No. 49] at 12.

[3] A copy of a redlined version of the FAC is attached to the Davis Decl. at Ex. A for the purpose of prominently identifying the new allegations to the original Complaint.

standing of the Combs Defendants, even before any evidence has been presented. Plaintiff cannot allege what day or time of year the alleged incident occurred, yet purports to miraculously recall the most prurient details with specificity. Accordingly, this case should be dismissed now, with prejudice, to protect the Combs Defendants from further reputational injury and before more party and judicial resources are squandered.

Plaintiff filed the Complaint on December 6, 2023 [Dkt. No. 1]. On February 20, 2024, the Corporate Defendants moved to dismiss the Complaint [Dkt. Nos. 41-43], and Mr. Combs and Mr. Pierre answered [Dkt. Nos. 38, 44]. On February 21, 2024, the Honorable Lewis A. Kaplan ruled that the VGM's "claim-revival" provision – the statute upon which Plaintiff relies – is preempted under New York state statutory law. Accordingly, on February 23, 2024, the Corporate Defendants supplemented their motion to dismiss the Complaint based on preemption, while the Individual Defendants moved for judgment on the pleadings on the same ground [Dkt. Nos. 45-48].

Instead of addressing Defendants' motions, on March 29, 2024, Plaintiff filed the FAC. While the FAC alleges a few "new" purported facts, it does not and cannot overcome the fatal defects to Plaintiff's sole claim, which were scrupulously examined in Defendants' prior motions:

First, Plaintiff's VGM claim is time-barred. Based on conduct that allegedly occurred in 2003, and applying the VGM's seven-year statute of limitations, Plaintiff's claim expired in 2010. Plaintiff erroneously contends that her claim is saved by the VGM's "claim-revival" provision. But the VGM's "claim-revival" provision is preempted by the Child Victims Act ("CVA"), which was enacted in 2019 by the New York State Legislature (the "NY Legislature"). N.Y. C.P.L.R. § 214-g.

Although the CVA, like the VGM, afforded parties a two-year window in which to bring otherwise expired claims, Plaintiff failed to file her purported claim until well after that window

closed on August 14, 2021. Plaintiff cannot now pursue her lawsuit based upon any maneuvering under the VGM. New York state law trumps New York City law, without exception, and therefore Plaintiff's claim is conclusively time-barred.

Second, Plaintiff's claim against the Corporate Defendants fails for the additional reason that the amendments upon which Plaintiff purports to rely were added to the VGM in 2022, long after the 2003 conduct alleged in the FAC. Retroactive application of an amendment is presumptively disfavored in New York. No basis exists for retroactive application of the amendments here.

And third, even if Plaintiff could rely upon the VGM's amended provisions, the FAC fails to state a claim against the Corporate Defendants because the Individual Defendants' alleged misconduct cannot be imputed to them. Sexual assault and related misbehavior by an employee are outside the scope of employment and cannot be imputed to an employer. Finally, Plaintiff has neither alleged facts nor law that can impute Mr. Combs's alleged misconduct to a corporate entity that he supposedly owns.

For all the above reasons, the FAC is fatally deficient and must be dismissed with prejudice because no amendment can save it.

THE RELEVANT AMENDED COMPLAINT ALLEGATIONS

In broad strokes, Plaintiff alleges that, on an unspecified date or time of year in 2003, Mr. Pierre and another defendant, identified only as the "Third Assailant," befriended Plaintiff in an unnamed "lounge" in the Greater-Detroit area. FAC ¶¶ 22-24.

After befriending Plaintiff and purportedly touting his executive status at BBE, Mr. Pierre allegedly telephoned Mr. Combs with Plaintiff, resulting in her invitation to visit New York City that evening to meet Mr. Combs. *Id.* ¶¶ 25-27. Plaintiff alleges that a private jet was waiting to

transport Plaintiff, Mr. Pierre, and the unidentified "Third Assailant." *Id*. While still at the lounge, prior to accompanying Mr. Pierre on this alleged trip on a private jet, Plaintiff alleges that Mr. Pierre led her into a bathroom where he smoked crack-cocaine and then "sexually assault[ed]" her. *Id.* ¶¶ 29-31.

Undeterred by Mr. Pierre's alleged drug use and sexual assault, Plaintiff willingly left the lounge with Mr. Pierre and the identified Third Assailant, culminating in her alleged private jet flight to "Daddy's House Recording Studio" in New York City. Once there, Plaintiff alleges she was "pl[ied]" with "copious amounts of drugs and alcohol." *Id.* ¶¶ 34, 38. Messrs. Combs and Pierre allegedly flaunted their associations with the music industry and "the accoutrements of the studio" to "entice" Plaintiff to "stay and drink alcohol and do drugs." *Id.* ¶¶ 28, 36, 41, 48, 51.

In an allegedly intoxicated state, Plaintiff claims she was sexually assaulted at the recording studio by Messrs. Combs and Pierre and the unknown Third Assailant, and then left on the bathroom floor until the next day when she was driven in an unidentified vehicle, transported to an unidentified airport, and then flown on an unidentified carrier to Michigan. *Id.* ¶¶ 42-54.

Notably, the FAC fails to allege any new specifics concerning any act or conduct by the Corporate Defendants that could or would sustain the VGM claim against them.

ARGUMENT

STANDARD OF REVIEW

Subject to certain limitations, under Fed. R. Civ. P. 12(b)(6), a district court must "accept[] all of the complaint's factual allegations as true and draw[] all reasonable inferences in the plaintiffs' favor." *Giunta v. Dingman*, 893 F.3d 73, 79 (2d Cir. 2018). Dismissal is warranted if a complaint fails to plead allegations which, if accepted as true, state a plausible claim. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

"A claim has 'facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.'" *Forest Park Pictures v. Universal Television Network, Inc.*, 683 F.3d 424, 429 (2d Cir. 2012) (quoting *Iqbal*, 556 U.S. at 678). While a plaintiff is not required to provide "detailed factual allegations," a complaint must assert "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Bell Atl. Corp.*, 550 U.S. at 555; *La Pietra v. RREEF Am., L.L.C.*, 738 F. Supp. 2d 432, 436 (S.D.N.Y. 2010) (stating that "the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions" (quoting *Iqbal*, 556 U.S. at 678)).

Indeed, "[c]onclusory allegations or legal conclusions masquerading as factual conclusions will not suffice to [defeat] a motion to dismiss." *Achtman v. Kirby, McInerney & Squire, LLP*, 464 F.3d 328, 337 (2d Cir. 2006) (quoting *Smith v. Local 819 I.B.T. Pension Plan*, 291 F.3d 236, 240 (2d. Cir. 2002)); *see also AJ Energy LLC v. Woori Bank*, No. 18-cv-3735 (JMF), 2019 WL 4688629, at *3 (S.D.N.Y. Sept. 26, 2019) ("A district court reviewing a motion to dismiss is not required to credit conclusory allegations unsupported by facts, … or to suspend common sense in conducting its analysis"), *aff'd*, 829 F. App'x 533 (2d Cir. 2020).

POINT I

PLAINTIFF'S CLAIM IS TIME-BARRED BECAUSE THE VGM'S "CLAIM-REVIVAL" PROVISION IS PREEMPTED BY THE ASA AND CVA

In 2000, the New York City Council (the "City Council") passed the VGM, which carries a seven-year statute of limitations. *See* N.Y.C. Admin. Code § 10-1105. Here, the alleged misconduct underlying Plaintiff's claim occurred in 2003. *See* FAC ¶ 6. Thus, Plaintiff's claim expired in 2010.

Although Plaintiff's underlying expired VGM claim was revived for a limited period, Plaintiff missed the window to pursue it. In 2019, the NY Legislature enacted the CVA, which revived claims tied to "sexual offenses" under the New York Penal Law, which were committed against individuals under the age of eighteen.[4] To effectuate this goal, the CVA added N.Y. C.P.L.R. § 214-g, creating a two-year claim-revival period.[5] Under § 214-g, certain otherwise expired claims tied to sexual assault could be pursued within the statutory two-year window:

> Notwithstanding any provision of law which imposes a period of limitation to the contrary … every civil claim or cause of action brought against any party alleging … conduct which would constitute a sexual offense as defined in article one hundred thirty of the penal law committed against a child less than eighteen years of age … which is barred as of the effective date of this section because the applicable period of limitation has expired ... *is hereby revived, and action thereon may be commenced not earlier than six months after, and not later than two years and six months after the effective date of this section*. …

N.Y. C.P.L.R. § 214-g (emphasis added). The claim-revival window closed on August 14, 2021. *See Oawlawolwaol*, 2021 WL 4355880, at *1 n.1. Plaintiff's claim was not commenced until December 6, 2023, more than two years after that date, and is therefore time-barred.

Plaintiff cannot escape the consequences of failing to timely file a lawsuit within the CVA's claim-revival window by predicating her claim on the VGM's claim-revival provision. FAC ¶ 68. In 2022, the City Council enacted the VGM's claim-revival provision, § 10-1105, which parrots the CVA's claim-revival provision:

---

[4] In 2022, the NY Legislature enacted the Adult Survivors Act ("ASA"), which created a similar claim-revival window that expired in November 2023, for individuals to allege expired sexual misconduct claims that occurred when they were age eighteen or older. *See* N.Y. C.P.L.R. § 214-j. Because Plaintiff alleges that she was seventeen when the alleged misconduct allegedly occurred, FAC ¶ 6, the CVA, not the ASA, applies to her purported sexual assault claim.

[5] The statute originally provided for a one-year claim-revival window, but it was increased to two years in 2020 because of the COVID-19 pandemic. *See Oawlawolwaol v. Boy Scouts of Am.*, No. 21-cv-4714 (PKC) (JMW), 2021 WL 4355880, at *1 n.1 (E.D.N.Y. Sept. 24, 2021).

> Notwithstanding any provision of law that imposes a period of limitation to the contrary, any civil claim or cause of action brought under this chapter that is barred because the applicable period of limitation has expired is hereby revived and may be commenced not earlier than six months after, and not later than two years and six months after, September 1, 2022.

N.Y.C. Admin. Code § 10-1105. But Plaintiff cannot rely on this provision because the CVA's claim-revival provision *preempts* the VGM's claim-revival provision.

As Judge Kaplan held in *Bellino v. Tallarico*, a time-barred claim – like the one brought by Plaintiff here – cannot be revived by § 10-1105 of the VGM because that New York City law "is preempted by the state's adoption of the [CVA] and the [ASA]." *See* No. 24-cv-0712 (LAK), 2024 WL 1344075, at *1 (S.D.N.Y. Feb. 21, 2024). In so ruling, Judge Kaplan found that the VGM's claim-revival provision was preempted "substantially for the reasons set forth by the defendant." *Id.*[6] As defendant explained in *Bellino*, a state law may preempt a local law either expressly or implicitly. *DJL Rest. Corp. v. City of New York*, 96 N.Y.2d 91, 95 (2001).

In cases of implicit field preemption of statutes, where the state legislature has "enacted a comprehensive and detailed regulatory scheme in a particular area," a local government, like the City Council, is "precluded from legislating on the same subject matter unless it has received clear and explicit authority to the contrary." *Id.* (internal quotations and citations omitted); *see also Albany Area Builders Ass'n v. Town of Guilderland*, 74 N.Y.2d 372, 377 (1989) ("Where the State has preempted the field, a local law regulating the same subject matter is deemed inconsistent with the State's transcendent interest, whether or not the terms of the local law actually conflict with a

[6] Judge Kaplan also ruled that plaintiff failed to plead facts amounting to a violation of the VGM, but held preemption to be an "independent" ground to dismiss the complaint. *Bellino*, 2024 WL 1344075, at *1. Notably, the court "readily" granted defendant's motion even though it was unopposed. *Id*. at 1. Plaintiff thereafter moved for reconsideration of the motion, but the court denied it, permitting her only to move to amend her complaint. Davis Decl., Ex. B. On April 26, 2024, plaintiff's motion to amend was denied. Davis Decl., Ex. C. Although the court did not address preemption, the original decision was not vacated or altered in any respect. *Id. passim.*

State-wide statute.").

Here, the ASA and CVA represent a comprehensive and detailed regulatory scheme concerning the revival of claims based on sexual offenses. This is manifestly apparent from the plain language of those statutes. The claim-revival provisions enacted under the ASA and CVA cover *all claims and causes of action* for misconduct tied to an offense under the N.Y. Penal Law §§ 130, *et seq*. *See* N.Y. C.P.L.R. §§ 214-g, 214-j (applying to "*every civil claim or cause of action* brought against any party alleging intentional or negligent act or omissions by a person for physical, psychological, or other injury or condition suffered as a result of conduct which would constitute a sexual offense as defined in article one hundred thirty of the penal law … ." (emphasis added)).

Moreover, the ASA and the CVA specify that they apply "[n]otwithstanding any provision of law which imposes a period of limitation *to the contrary*." *Id.* (emphasis added). The VGM's claim-revival provision is "contrary" to that clause because it creates an independent claim-revival period for claims based on sexual offenses. And both the ASA and CVA dictate that the actions they revive "may be commenced … *not later than*" the date when their revival windows expire. *Id.* (emphasis added). The VGM contradicts this provision by permitting the filing of claims *after* the expiration of the deadlines set under the ASA and CVA. Hence, the VGM's claim-revival provision is incompatible with the ASA and CVA and is barred by the preemption doctrine.[7]

[7] No prior precedent conflicts with the applicability of the preemption doctrine over the VGM's claim-revival provision. *See Doe v. Gooding*, No. 20-cv-06569 (PAC), 2022 WL 1104750, at *2 (S.D.N.Y. Apr. 13, 2022); *Engelman v. Rofe*, 194 A.D.3d 26, 32 (1st Dep't 2021). In *Engelman*, the First Department ruled that the VGM's limitations period was not preempted by state law because "the legislative intent of the VGM was *to create a civil rights remedy or cause of action* such as in [the Violence Against Women Act], rather than to extend the statute of

Furthermore, allowing the VGM to override the revival windows created by the ASA and CVA would frustrate the policy judgment of the NY Legislature. As the Court of Appeals has held, "*[r]evival is an extreme exercise of legislative power*. … Uncertainties are resolved against consequences so drastic." *Regina Metro. Co., LLC v. New York State Div. of Hous. & Cmty. Renewal*, 35 N.Y.3d 332, 371 (2020) (quoting *Hopkins v. Lincoln Trust Co.*, 233 N.Y. 213, 215 (1922)). To balance this extreme exercise of legislative power and its "upsetting [of] the strong public policy favoring finality, predictability, fairness and repose served by the statute of limitations," the NY Legislature provides only "a limited window when stale claims may be pursued." *Id.* at 371-72.

The CVA has a two-year claim-revival period, reflecting the NY Legislature's deliberate balancing of the interests at stake in circumstances involving sexual offenses against children. *Id.*; *see also PC-41 Doe v. Poly Prep Country Day Sch.*, 590 F. Supp. 3d 551, 564-65 (E.D.N.Y. 2021) (discussing length of revival window). Indeed, allowing the City Council to alter that limitations period would undercut the NY Legislature's state-wide authority and its policy judgments affecting New Yorkers. Through the passage of the CVA and ASA, the NY Legislature intended to occupy the entire field of statutes reviving claims based on sexual offenses.

In short, the City Council cannot frustrate the NY Legislature's statutory scheme by creating a separate, inconsistent claim-revival window for the same claims. Accordingly, Plaintiff cannot rely on VGM § 10-1105 to save her expired sexual assault claim. Her claim is time-barred

---

limitations for a particular class of assaults." 194 A.D.3d at 32 (emphasis added); *see also Gooding*, 2022 WL 1104750, at *2-3 (adopting *Engelman*). But *Engelman* and *Gooding* were decided without analysis or comparison of the claim-revival provisions of the CVA, ASA, or VGM. The City Council amended the VGM to revive claims that were already revived under CVA and ASA. That is impermissible under *Engelman* and inconsistent with the intent and purpose of those statutes. *See New York City Health & Hosps. Corp. v. Council of City of New York*, 303 A.D.2d 69, 74 (1st Dep't 2003) ("the City Council may not exercise its police power to adopt a law … which is inconsistent with a state statute").

and the FAC must be dismissed with prejudice.

POINT II

THE VGM CANNOT BE RETROACTIVELY ALLEGED AGAINST THE CORPORATE DEFENDANTS

Plaintiff's claim against the Corporate Defendants is barred for an additional, independent reason beyond the unalterable running of the statute of limitations. Although the VGM was originally passed in 2000, it was amended in 2022 to broaden its scope. Plaintiff relies on this amended language to ensnare the Corporate Defendants, but she cannot do so because it would require a retroactive application of the amended law, which is prohibited.

Prior to 2022, the VGM provided, in relevant part, "any person claiming to be injured by an *individual* who commits a crime of violence motivated by gender … has a cause of action against such *individual* … ." *See* Davis Decl., Ex. D at 59-60 (emphasis adjusted); *see also Eckhart v. Fox News Network, LLC*, No. 20-cv-5593 (RA), 2021 WL 4124616, at *25 (S.D.N.Y. Sept. 9, 2021) (quoting original language).

The Corporate Defendants have no liability under the original version of the VGM because they are not "individuals" under the plain meaning of that term. *See Mohamad v. Palestinian Auth.*, 566 U.S. 449, 454-57 (2012) (explaining that the ordinary meaning of "individual" refers to "a natural person" as opposed to "a corporation," and that most statutes adopt this usage except where the legislature indicates otherwise); *see also Ray v. Ray*, 22 F.4th 69, 73 (2d Cir. 2021) (statute is construed according to "plain meaning" where language is unambiguous).[8]

The VGM was amended in 2022 to change the word "*individual*" to "*party*" and add

[8] For the reasons discussed in Point III, *infra*, intentional sexual misconduct cannot be imputed to a corporate employer, thus the Corporate Defendants cannot be deemed to have "committed" a crime of violence under the original version of the VGM.

"*directs, enables, participates in, or conspires in*" next to "*commits*" to expand the conduct captured by the statute. The VGM now provides, in relevant part, that "any person claiming to be injured by a *party* who commits, *directs, enables, participates in, or conspires in* the commission of a crime of violence motivated by gender has a cause of action against such *party* … ." N.Y.C. Admin. Code § 10-1104 (emphasis added); *see also* Davis Decl., Ex. E (identifying amended statute).

Plaintiff relies on this amended provision of the VGM in an attempt to allege a claim against the Corporate Defendants. FAC ¶ 65. Because the amendment was not operative until 2022, it is inapplicable to Plaintiff's claim. New York courts uniformly recognize a "'deeply rooted' presumption against retroactivity … based on '[e]lementary considerations of fairness [that] dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly.'" *Regina Metro. Co., LLC*, 35 N.Y.3d at 370 (quoting *Landgraf v. USI Film Prod.*, 511 U.S. 244, 265 (1994)). "In light of these concerns, '[i]t takes a clear expression of the legislative purpose … to justify a retroactive application' of a statute." *Id.* (quoting *Gleason v. Gleason*, 26 N.Y.2d 28, 36 (1970)). Indeed, the Court of Appeals has held that "statutes will not be given such construction unless the language expressly or by necessary implication requires it." *Gottwald v. Sebert*, 40 N.Y.3d 240, 258 (2023) (quoting *Majewski v. Broadalbin-Perth Cent. School Dist.*, 91 N.Y.2d 577, 584 (1998)).

Here, neither by express language nor necessary implication is the VGM afforded retroactive effect. For this reason, in *Louis v. Niederhoffer*, No. 23-cv-6470 (LTS), 2023 WL 8777015, at *1 (S.D.N.Y. Dec. 19, 2023), the court held that the VGM does not apply retroactively. Plaintiff there filed a claim under the VGM for misconduct that occurred in the 1970s. However, the court dismissed the claim because the VGM "is not the type of statute that would be given

retroactive effect." *Id.* (quoting *Adams v. Jenkins*, Index No. 115745/03, 2005 WL 6584554, at *1 (N.Y. Sup. Ct. Apr. 22, 2005) (holding the VGM does not apply retroactively to conduct pre-dating its enactment)).

Significantly, the *Louis* court expressly held that the VGM is not a retroactive statute and the claim-revival amendment "does not alter this conclusion." *Id.*; N.Y.C. Admin. Code § 10-1105 ("any civil claim … that is *barred because the applicable period of limitation has expired is hereby revived* and may be commenced not earlier than six months after, and not later than two years and six months after, September 1, 2022" (emphasis added)). The court correctly recognized that this provision did not open the door to claims for misconduct occurring *before* the statute was enacted. *Louis*, 2023 WL 8777015, at *1.

Concurring with these decisions, Judge Kaplan recently held that the VGM is without retroactive effect. In denying plaintiff's motion to amend her complaint, Judge Kaplan held that the VGM claim could not be sustained, in part, because the VGM "was not enacted until *approximately 25 years after the alleged crime of violence occurred and does not even purport to be retroactive*, [and thus] the proposed amended complaint would fail to state a legally sufficient claim under that statute … ." Davis Decl., Ex. C at 2 (emphasis added).

Under these precedents, the Corporate Defendants are likewise not exposed to claims involving misconduct allegedly occurring before the enactment of the 2022 amendment of the VGM to bring non-individual "parties" within its scope. *Id*. § 10-1104.[9] Because Plaintiff's claim is premised on allegations dating back to 2003, it cannot be asserted against the Corporate Defendants by virtue of the VGM's claim-revival provision. N.Y.C. Admin. Code § 10-1105. The

[9] The same limitations regarding the retroactive effect of new statutes apply to a statute's amendment. *See Regina*, 35 N.Y.3d at 349 (considering retroactive effect of amendments to existing law).

City Council never expressed any intent to expand liability for violations of the VGM to misconduct occurring before its amendment – much less decades before it.[10]

For these reasons, the VGM cannot apply to the Corporate Defendants, and thus the claim should be dismissed with prejudice.

POINT III

THE ALLEGED MISCONDUCT OF THE INDIVIDUAL DEFENDANTS CANNOT BE IMPUTED TO THE CORPORATE DEFENDANTS

Even if Plaintiff were permitted to rely upon the amendment of the VGM, her claim is still doomed against the Corporate Defendants. The FAC alleges that the Corporate Defendants "enabled the commission of the crime of violence motivated by gender." FAC ¶ 65. To substantiate this allegation, the FAC further alleges: (1) Mr. Combs was the owner of BBE and DHR, *id.* ¶¶ 13, 16; (2) Mr. Pierre and the unidentified Third Assailant were employees of BBE, with Mr. Pierre being a "high-ranking executive," *id.* ¶¶ 14, 15; (3) the alleged sexual assault occurred on premises owned by BBE and DHR, with the Individual Defendants there as onlookers, who encouraged the misconduct, *id.* ¶¶ 16-17, 48-49, 51; and (4) the Individual Defendants used their "ownership," "title[s]," and/or "affiliations" with the Corporate Defendants, as well as the "accoutrements of the studio," to facilitate the alleged assault. *Id.* ¶¶ 16-17, 25, 28, 36, 41, 48, 51.

None of those allegations support imputation of the Individual Defendants' purported misconduct to the Corporate Defendants, and the claims against them should therefore be

[10] The expansive application of retroactive liability sought by Plaintiff is also unconstitutional under the Due Process Clauses of both the United States and New York State Constitutions. No rational basis exists for creating a tacit and unspecified retroactivity period that reaches back decades. *Regina*, 35 N.Y.3d at 376 ("In determining whether retroactive application of a statute is supported by a rational basis, the relationship between the length of the retroactivity period and its purpose is critical."). This constitutional impediment bolsters denying the retroactivity of the VGM amendments. *In re Jamie J.*, 30 N.Y.3d 275, 282 (2017) (the "canon of constitutional avoidance" counsels courts to "construe the statute, if possible, to avoid [a] due process infirmity").

dismissed.

A. The Employees' Alleged Misconduct Cannot Be Imputed to the Corporate Defendants

A corporation "can only act through its employees." *Ozbakir v. Scotti*, 906 F. Supp. 2d 188, 194 (W.D.N.Y. 2012). Thus, for Plaintiff to demonstrate that the Corporate Defendants engaged in acts that would render them liable under the VGM, she must identify an act taken by an employee that can be imputed to them. The two employees referenced in the FAC are Mr. Pierre and the unidentified Third Assailant. FAC ¶¶ 14, 15. Their alleged acts, which consisted of intentional sexual misconduct, were outside the scope of their employment as a matter of law, and thus cannot be imputed to the Corporate Defendants.[11]

Under New York law, an employer may be responsible for the acts of its employees "only if those acts were committed in furtherance of the employer's business and within the scope of employment." *N.X. v. Cabrini Med. Ctr.*, 97 N.Y.2d 247, 251 (2002). "It is well-settled in the Second Circuit" that "*sexual misconduct is necessarily outside the scope of employment*." *Doe v. New York City Dep't of Educ.*, No. 21-cv-4332, 2023 WL 2574741, at *5 (E.D.N.Y. Mar. 20, 2023) (emphasis added); *see also*, *e.g.*, *Doe v. Solebury Sch.*, No. 21-cv-06792 (LLS), 2022 WL 1488173, at *3-4 (S.D.N.Y. May 11, 2022) (dismissing *vicarious liability* claim against employer related to sexual assaults); *Doe v. Alsaud*, 12 F. Supp. 3d 674, 677 (S.D.N.Y. 2014) (dismissing *respondeat superior* claim against employer and noting that "[n]o decision in New York has been cited to date in which the doctrine of *respondeat superior* was held to apply to sexual assault").

Indeed, "where an employee undertook conduct for personal reasons, or had personal

[11] Mr. Pierre and the unidentified Third Assailant are not alleged to be employees of DHR. Thus, the claim against DHR must be dismissed.

motivations, the employee's conduct cannot be attributed to his or her employer." *Doe v. Guthrie Clinic, Ltd.*, No. 11-cv-6089T, 2012 WL 531026, at *5 (W.D.N.Y. Feb. 17, 2012) (citing cases). Sexual assault and related behaviors are considered to "arise from personal motives and do not further an employer's business." *Swarna v. Al-Awadi*, 622 F.3d 123, 144-45 (2d Cir. 2010) (quoting *Ross v. Mitsui Fudosan, Inc.*, 2 F. Supp. 2d 522, 531 (S.D.N.Y. 1998)); *see also Cabrini Med. Ctr.*, 97 N.Y.2d at 251 ("A sexual assault perpetrated by a hospital employee is not in furtherance of hospital business and is a clear departure from the scope of employment, having been committed for wholly personal motives."). Accordingly, such misconduct cannot be imputed to a corporate employer.

Here, Mr. Pierre and the unidentified Third Assailant are alleged to have committed intentional acts driven by personal motive, culminating in an alleged "sexual assault." FAC ¶¶ 62-64 (identifying the "crime of violence" as "sexual assault"). None of this alleged misconduct, which is wholly based on *personal motive*, is or could be in furtherance of the Corporate Defendants' businesses, which consist of "music, media, and entertainment." *Id.* ¶¶ 16-17.

The Individual Defendants are also alleged to have exploited their corporate titles and corporate property to further their personal agendas, but this does not alter the fact that sexual assault cannot be imputed to the Corporate Defendants. *Id.* ¶¶ 16-17, 25, 28, 36, 41, 48, 51. An employee's abuse of perks or privileges bestowed by an employer does not render personally-motivated misconduct within the scope of employment. *See C.Q. v. Est. of Rockefeller*, No. 20-cv-2205 (VSB), 2021 WL 4942802, at *2-4 (S.D.N.Y. Oct. 21, 2021) (employee's misuse of employer's apartment to engage in sexual abuse could not be imputed to employer); *Solebury Sch.*, 2022 WL 1488173, at *3-4 (school not vicariously liable for sexual assaults committed on campus by teacher abusing position of authority); *see also Cort v. Marshall's Dep't Store*, No. 14-cv-7385

(NGG) (RER), 2015 WL 9582426, at *1, 5 (E.D.N.Y. Dec. 29, 2015) (mere fact that assault occurred on corporate premises insufficient, without more, to hold corporation liable).[12]

The misconduct alleged in the FAC can only be inferred to be driven by personal motive, which is outside the scope of employment. Thus, the actions of neither Mr. Pierre nor the unidentified Third Assailant (and Mr. Combs assuming he is included as an employee) cannot be imputed to the Corporate Defendants.

B. Mr. Combs's Alleged Misconduct Cannot Be Imputed to the Corporate Defendants

The FAC omits any allegation imputing the alleged misconduct of Mr. Combs to the Corporate Defendants. While Mr. Combs is alleged to be the "owner" of both Corporate Defendants, FAC ¶¶ 16-17, no lawful basis exists to hold them liable for his alleged misconduct. A corporate entity may only be held liable for the acts of its owner in extraordinary circumstances, under a "reverse piercing theory." *See*, *e.g.*, *Am. Fuel Corp. v. Utah Energy Dev. Co.*, 122 F.3d 130, 134 (2d Cir. 1997). However, reverse-piercing is appropriate only where (i) a corporation is "dominated," such that, for example, corporate formalities are not observed, and (ii) the "domination was used to commit a fraud or wrong that injured the party seeking to pierce the veil." *Id.*; *see also Societe d'Assurance de l'Est SPRL v. Citigroup Inc.*, No. 10-cv-4754 (JGK), 2011 WL 4056306, at *5 (S.D.N.Y. Sept. 13, 2011) ("Disregard of the corporate form is warranted only in 'extraordinary circumstances,' and conclusory allegations of dominance and control will not suffice to defeat a motion to dismiss" (quoting *EED Holdings v. Palmer Johnson Acquisition*

[12] Mr. Combs is not alleged to be one of the Corporate Defendants' employees, but even if he were, it would not impute liability to the entities. It makes no difference that the FAC alleges that "Mr. Combs had [Plaintiff] trafficked to New York to observe him working prior to committing unlawful acts against her at his place of employment." FAC ¶ 36. That Mr. Combs allegedly wanted Plaintiff to "observe him working" does not evidence that such purported gratification furthered the business of the Corporate Defendants. The only inference that can be objectively drawn from the allegations is that Mr. Combs acted from personal motive to "entice" Plaintiff to New York. *Id.* ¶¶ 28, 41.

Corp., 228 F.R.D. 508, 511-12 (S.D.N.Y. 2005)).

None of the allegations required to support reverse piercing have been pleaded. The FAC contains: (1) no allegation of any non-observance of corporate formalities; (2) no allegations of Mr. Combs's purported "dominance and control" over BBE or DHR; and (3) no allegations that such dominance was used to perpetrate a fraud or wrong against Plaintiff. Accordingly, no claim has been stated against the Corporate Defendants and they should be dismissed from the action with prejudice.

CONCLUSION

For all the foregoing reasons, the Combs Defendants respectfully request that the Court grant an order dismissing the Amended Complaint against them with prejudice, together with such other and further relief as the Court deems just and proper.

Dated: May 10, 2024
New York, New York

JONATHAN D. DAVIS, P.C.

By: */s/ Jonathan D. Davis*
Jonathan D. Davis
Anthony C. LoMonaco
1 Rockefeller Plaza
Suite 1712
New York, New York 10020
(212) 687-5464

Attorneys for Defendants Sean Combs, Daddy's House Recordings, Inc., and Bad Boy Entertainment Holdings, Inc.

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JANE DOE, Plaintiff, v. SEAN COMBS, HARVE PIERRE; THE THIRD ASSAILANT; DADDY'S HOUSE RECORDINGS, INC. and BAD BOY ENTERTAINMENT HOLDINGS, INC., Defendants.	Civil Case No. 1:23-cv-10628-JGLC **AMENDED COMPLAINT** **JURY TRIAL DEMAND**

TRIGGER WARNING:
THIS DOCUMENT CONTAINS HIGHLY GRAPHIC INFORMATION OF A SEXUAL NATURE, INCLUDING SEXUAL ASSAULT

Plaintiff Jane Doe ("Ms. Doe") hereby alleges as follows:

PRELIMINARY STATEMENT

1. On November 16, 2023, Casandra Ventura a/k/a "Cassie" filed a 35-page lawsuit in which she exposed Sean Combs for subjecting her to nearly a decade of physical, sexual and emotional abuse punctuated by rape, sex trafficking and being forced to engage in drug fueled nonconsensual sexual encounters with other men.

2. Ordinarily, when a lawsuit such as Ms. Ventura's is filed that involves events that took place long ago, witnesses are few and far between and evidence hard to muster. Not so for the claims brought against Mr. Combs. Within minutes of the filing, salient facts of Ms. Ventura's claims were confirmed by various witnesses, including a rival musician whose car Mr. Combs blew up as well as various individuals who observed Mr. Combs beat Ms. Ventura.

3. Only a few days later, two other lawsuits were filed against Mr. Combs. In one, plaintiff Joi Dickerson-Neal alleged that Mr. Combs drugged and sexually assaulted her when she was a college student. The other lawsuit accused Ms. Combs and singer Aaron Hall of forcing the plaintiff and another unidentified woman into nonconsensual sex.

4. At the same time, a fourth lawsuit was filed; this one against Mr. Combs' companies and Defendant Harve Pierre, the longtime President of Bad Boy Entertainment Holdings, Inc. ("Bad Boy"). The suit alleged that Mr. Pierre used his position of power at Bad Boy to groom and sexually assault his former assistant, and that Bad Boy looked the other way at the time.

5. This ~~is now~~lawsuit was the fifth ~~lawsuit~~suit filed against Mr. Combs ~~in the last~~over a three ~~weeks~~-week period in winter 2023. Incredibly, the allegations brought by Ms. Doe are in many ways even more egregious than those brought by his prior victims.

6. Specifically, in 2003, when she was only 17 years old and in the 11th grade, Ms. Doe was sex trafficked and gang raped by Mr. Combs, Mr. Pierre and the Third Assailant.[1] In short:

- When she was just a teenager, Ms. Doe met Mr. Pierre and the Third Assailant in a lounge in the Detroit, Michigan area. While at the lounge, Mr. Pierre insisted that he was "best friends" with Mr. Combs, and even called Mr. Combs with Ms. Doe.

- Mr. Combs convinced Ms. Doe, who was half his age at the time, to accompany Mr. Pierre and the Third Assailant on a private jet to come to his studio in New York City.

- Before they left for the private jet, Mr. Pierre smoked crack cocaine in a bathroom at the lounge, in which he also sexually assaulted Ms. Doe by forcing her to give him oral sex.

[1] The "Third Assailant" is a pseudonym. When the name of the Third Assailant is revealed during discovery, Plaintiff will seek to amend the Complaint to replace the pseudonym.

- Mr. Pierre, Third Assailant and another gentleman then escorted the highschooler to a private jet, which flew them to Teterboro, New Jersey. There were SUVs awaiting the group at Teterboro, and the four of them were driven to Daddy's House Recording Studio, a studio famously owned and operated by Mr. Combs and Bad Boy.

- While at the studio, Mr. Combs and his associates, including Mr. Pierre, plied Ms. Doe with drugs and alcohol. As the night wore on, the 17-year-old Ms. Doe became more and more inebriated, eventually to the point that she could not possibly have consented to having sex with anyone, much less someone twice her age.

- While at the studio, Ms. Doe was gang raped by Mr. Combs, the Third Assailant and Mr. Pierre, in that order.

- While Mr. Combs was raping Ms. Doe, he complained that he could not "get off" unless she pinched his nipples as hard as she could.

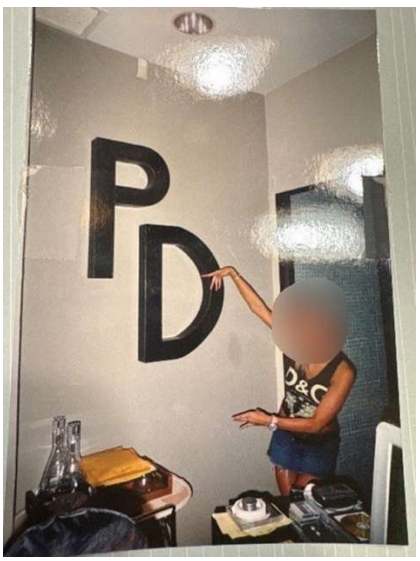
- Mr. Combs then watched on as Third Assailant, who Ms. Doe had not even realized had begun to have sex with her, raped Ms. Doe as she told him to stop.

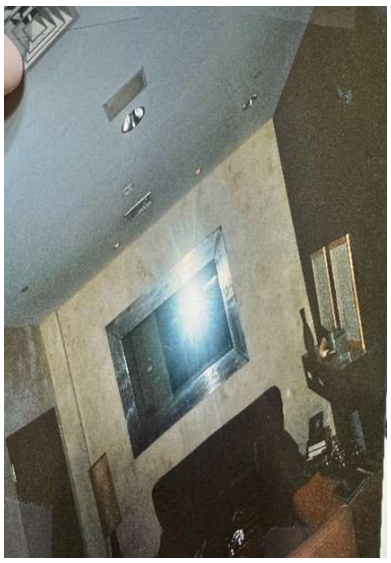
- After Third Assailant was finished, Mr. Pierre took his turn at raping Ms. Doe and then violently forced her to give him oral sex, during which Ms. Doe was choking and struggling to breathe.

- When Mr. Pierre finished, he left Ms. Doe in the bathroom alone. Ms. Doe fell into the fetal position and lay on the floor. Her vagina was in pain.

- Finally, after a period of time, Ms. Doe regained her bearings. However, she could barely stand up following the gang rape, and had to be helped to walk out of the building and back into a car. She was taken back to an airport and flown back to Michigan. However, she has very limited recollection of her transport home, and only remembers being in her car sometime early in the morning.

7. Unlike many victims who have come forward after decades, Ms. Doe can prove that she not only met Mr. Combs on the night in question, but was in his studio, in New York City, with him on that night. Remember when viewing these, Ms. Doe was 17 years old.[2]





8. Ms. Doe has lived with her memories of this fateful night for 20 years, during which time she has suffered extreme emotional distress that has impacted nearly every aspect of

[2] Ms. Doe's face has been blurred in the following pictures for the purpose of anonymity.

her life and personal relationships. Given the brave women who have come forward against Ms. Combs and Mr. Pierre in recent weeks, Ms. Doe is doing the same.

9. To that end, Ms. Doe brings this action seeking injunctive, declaratory and monetary relief against Defendants in violation of the Victims of Gender-Motivated Violence Protection Law, Gender Motivated Violence Act, N.Y.C. Admin. Code §§ 10-1101, *et seq.* ("VGMVPL").

JURISDICTION AND VENUE

10. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332, as this action involves citizens of different states and the amount in controversy in this matter exceeds $75,000. The Court has supplemental jurisdiction over Plaintiff's related claims arising under state and city law pursuant to 28 U.S.C. § 1367(a).

11. Pursuant to 28 U.S.C. § 1391(b), venue is proper in this Court because a substantial part of the events or omissions giving rise to this action, including the unlawful employment practices and intentional and negligent tortious conduct alleged herein, occurred in this district.

PARTIES

12. Plaintiff Jane Doe is a citizen of State of Michigan and Canada.

13. Defendant Sean Combs is a citizen of the State of California. At all relevant times Mr. Combs was the owner of Defendants Bad Boy Entertainment Holdings and Daddy's House Recordings, Inc.

14. Defendant Harve Pierre is ~~a citizen of the State of New York~~, upon information and belief, a citizen of the State of New Jersey. At all relevant times Mr. Pierre was a high-ranking executive (Senior Vice President) of Defendant Bad Boy Entertainment Holdings, Inc.,

and was promoted to Executive VP and General Manager of Bad Boy in 2003, the year the events described herein took place.

15. Defendant the Third Assailant is, upon information and belief, a citizen of the State of New York. Upon information and belief, at all relevant times, the Third Assailant was an employee and/or agent of Defendant Bad Boy Entertainment Holdings, Inc.

16. Defendant Daddy's House Recordings, Inc. ("Daddy's House") is a music, media, and entertainment company founded and owned by Defendant Sean Combs and Bad Boy. Daddy's House is incorporated and headquartered in New York, New York. During the relevant time period, Daddy's House and/or Sean Combs owned and operated the Daddy's House Recording Studio wherein Ms. Doe was raped by Mr. Combs, Mr. Pierre and Third Assailant. As described herein, Mr. Combs used the facts of his ownership of and title at Daddy's House in order to facilitate the unlawful conduct described herein. In addition, he, as the owner of Daddy's House, watched Ms. Doe being raped by two of his employees, on the premises of Daddy's House, and did nothing to stop them (in fact, he encouraged it).

17. Defendant Bad Boy Entertainment Holdings, Inc. ("Bad Boy") is a music, media, and entertainment company founded and owned by Defendant Sean Combs. Bad Boy is incorporated and headquartered in New York, New York. During the relevant time period, Bad Boy and/or Sean Combs owned and operated the Daddy's House Recording Studio wherein Ms. Doe was raped by Mr. Combs, Mr. Pierre and Third Assailant. As described herein, Mr. Combs used the facts of his ownership of and title at Bad Boy in order to facilitate the unlawful conduct described herein. In addition, he, as the owner of Bad Boy, watched Ms. Doe being raped by two of his employees, on the premises of Daddy's House, and did nothing to stop them (in fact, he encouraged it). Moreover, Mr. Pierre used his title and that of Mr. Combs in order to facilitate

the unlawful conduct described herein. Further, he, the Senior Vice President of Bad Boy, watched Ms. Doe being raped by its owner and one of its employees, on the premises of Daddy's House, and did nothing to stop them (in fact, he encouraged it).

FACTUAL ALLEGATIONS

18. In 2003, Ms. Doe was a 17-year-old 11th grader residing in a suburb of Detroit Michigan.

19. At the time, Mr. Combs was 34 years old – twice the age of Ms. Doe – and one of the most well-known and influential music artists of all time.

20. A decade earlier, Mr. Combs founded Bad Boy and installed his longtime friend, Mr. Pierre, into the role of Senior Vice President, then the role of Executive Vice President, and eventually, promoted him to President of the Company.

21. At the time, Mr. Combs had many connections to Michigan, including, among others, to the Black Mafia Family ("BMF"), a drug trafficking and money laundering organization that is rumored to have seeded Bad Boy. Accordingly, upon information and belief, Mr. Combs' associates, including Mr. Pierre and the Third Assailant, spent significant time in and around Detroit, Michigan.

22. On one evening between the spring and fall of 2003, Ms. Doe was out with friends. It was not uncommon for her and her friends to frequent bars and lounges in the Detroit area. Certain of Ms. Doe's friends were well connected with people in the music industry.

23. On the evening in question, Ms. Doe was with friends in a lounge when she was approached by who she later learned was Mr. Pierre. Mr. Pierre was with his own friends and/or business associates, including the Third Assailant. Mr. Pierre, the Third Assailant and their friends were dressed in suits.

24. Mr. Pierre ~~repeatedly~~ complimented Ms. Doe's appearance, saying that she was hot, among other things. He then began talking about his self-described "best friend" and "brother," Mr. Combs.

25. He told Ms. Doe that he and his friends, including the Third Assailant, were executives at Bad Boy, Mr. Combs' well-known recording label. He referenced his affiliation with Bad Boy and Mr. Combs as a means of keeping Ms. Doe interested in the conversation.

~~25.~~26. Specifically, Mr. Pierre continually stated that Mr. Combs would love to meet Ms. Doe.

~~26.~~27. Mr. Pierre even called Mr. Combs and put Ms. Doe on the line. Mr. Combs told Ms. Doe that he would love to meet her, and that she should accompany Mr. Pierre to New York City in a private jet.

28. The individual defendants used not only their affiliations with Bad Boy as a means to facilitate the unlawful conduct to follow, but also their affiliations with Daddy's House, where Ms. Doe was enticed to meet Mr. Combs.

~~27.~~29. Shortly thereafter, Mr. Pierre directed Ms. Doe to go with him into the bathroom at the lounge. Once inside the bathroom, Mr. Pierre began to smoke crack cocaine from what appeared to be an aluminum can.

~~28.~~30. After he finished smoking crack, Mr. Pierre suddenly took out his penis, demanded that Ms. Doe "suck [his] dick" and forced Ms. Doe's head down to perform oral sex on him.

~~29.~~31. After sexually assaulting Ms. Doe, Mr. Pierre directed her to accompany him, the Third Assailant and a third member of their group to an airport in Pontiac, Michigan, where

Signature, a Fixed Base Operator, had prepared a private jet to take the four of them to New York City.

~~30.~~32. Upon information and belief, the private jet landed at Teterboro Airport. Upon departing the jet, two black SUVs were awaiting the group.

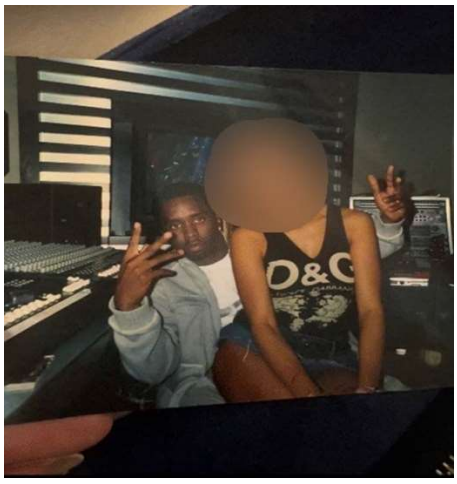
~~31.~~33. Ms. Doe got into an SUV with Mr. Pierre, and the Third Assailant and the other member of the group went in the second SUV.

~~32.~~34. The SUVs brought the group to Daddy's House Recording Studio, a recording studio and hangout owned and operated by Mr. Combs and Bad Boy.

~~33.~~35. When Ms. Doe arrived, she was escorted into the building, where she distinctly remembers seeing a sign for the company, Technicolor.

~~34.~~36. Upon entering the studio, Ms. Doe first encountered Mr. Combs. At the time she arrived, a female recording artist was using the studio as Mr. Combs and her parents watched on. She finished up shortly after Ms. Doe arrived and left. In other words, Mr. Combs had Ms. Doe trafficked to New York to observe him working prior to committing unlawful acts against her at his place of employment.

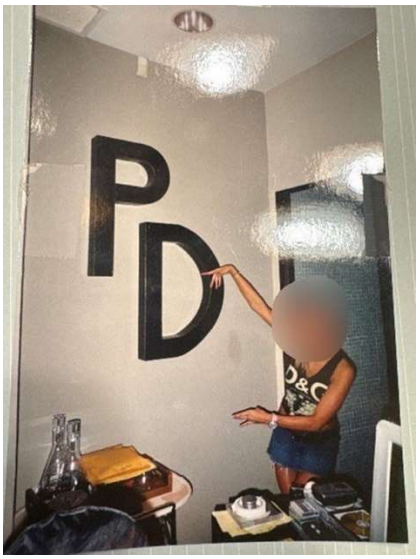
~~35.~~37. While still in the studio section of Daddy's House, Mr. Combs asked Ms. Doe to sit on his lap to take a picture. A copy of the photograph is below.

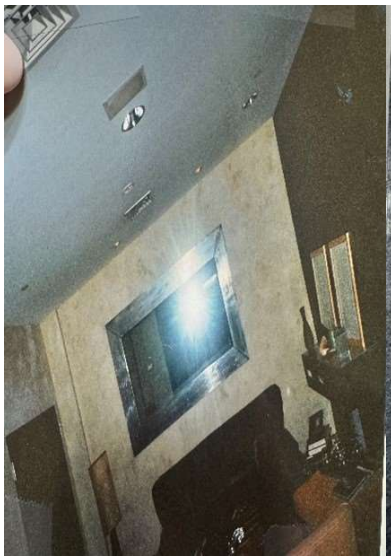


~~36.~~38. Mr. Combs, Mr. Pierre and the Third Assailant began to ply Ms. Doe – a 17-year-old child at the time – with copious amounts of drugs and alcohol.

~~37.~~39. While the evening became a blur, Ms. Doe does recall Mr. Combs, Mr. Pierre and the Third Assailant hitting on her incessantly, stroking her body, asking to see her "ass" and telling her how "hot" and "sexy" she was.

~~38.~~40. Various other pictures were taken in the studio that night, leaving no doubt that Ms. Doe was in Mr. Combs' New York City studio, with Mr. Combs, on the night she was raped.






41. And, not only was Ms. Doe at the studio, but the individual defendants used the accoutrements of the studio (as depicted above) to entice Ms. Doe to stay and drink alcohol and do drugs.

~~39.~~42. As the night wore on, the 17-year-old Ms. Doe became more and more inebriated, eventually to the point that she could not possibly have consented to having sex with anyone, much less someone twice her age.

~~40.~~43. Nevertheless, that evening Mr. Combs directed Ms. Doe to accompany him to the bathroom at the studio. Once there, Mr. Combs removed Ms. Doe's skirt and underwear and penetrated her from behind with his penis while she hung over the sink.

~~41.~~44. Ms. Doe did not consent to having sex with Mr. Combs, but he continued thrusting. At some point, Mr. Combs turned Ms. Doe around to face him. He told her that he could not orgasm and asked her to squeeze his nipples as hard as she could to help him "get off." He then turned her back around and continued to rape her.

45. Mr. Pierre, then SVP of Bad Boy, and the Third Assailant, who upon information and belief was also an executive of Bad Boy, watched Mr. Combs rape Ms. Doe, on the premises of Daddy's House, and did nothing to stop him. In fact, he encouraged it.

~~42.~~46. By this point, Ms. Doe was coming in and out of consciousness because of the drugs and alcohol she had been given by Defendants. Her next memory was looking up into the mirror above the sink to find that the Third Assailant had replaced Mr. Combs and was raping her from behind. Mr. Combs was watching the Third Assailant sexually assault Ms. Doe from a chair outside of the bathroom.

~~43.~~47. At this point, Ms. Doe mustered the energy to tell the Third Assailant to stop, and that she did not want to be having sex with him. The Third Assailant did not stop, and continued to rape Ms. Doe, who did not have the strength to force him off of her.

48. Mr. Combs used the facts of his ownership of and title at Daddy's House in order to facilitate the unlawful conduct described herein. In addition, he, as the owner of Daddy's House, watched Ms. Doe being raped by one of his employees, on the premises of Daddy's House, and did nothing to stop him. In fact, he encouraged it.

49. And Mr. Pierre, then SVP of Bad Boy, watched one of his employees rape Ms. Doe, on the premises of Daddy's House, and did nothing to stop him. In fact, he encouraged it.

~~44.~~50. After the Third Assailant was finished, he was replaced by Mr. Pierre, who began by having nonconsensual vaginal sex with Ms. Doe before violently forcing her to give him oral sex. During the latter part of the sexual assault, Mr. Pierre forced his penis into Ms. Doe's mouth without her consent. Ms. Doe remembers that Mr. Pierre was sweaty and that she had difficulty breathing.

51. Mr. Combs used the facts of his ownership of and title at Daddy's House in order to facilitate the unlawful conduct described herein. In addition, he, as the owner of Daddy's House, watched Ms. Doe being raped by the Senior Vice President of his Company, on the premises of Daddy's House, and did nothing to stop him. In fact, he encouraged it.

~~45.~~52. When Mr. Pierre finished, he left Ms. Doe in the bathroom alone. Ms. Doe fell into the fetal position and lay on the floor. Her vagina was in pain.

~~46.~~53. Finally, after a period of time, Ms. Doe regained her bearings. However, she could barely stand up following the gang rape, and had to be helped to walk out of the building and back into a car. She was taken back to an airport and flown back to Michigan. However, she has very limited recollection of her transport home, and only remembers being in her car sometime early in the morning. Her underwear was missing.

~~47.~~54. As a result of being raped by Mr. Combs, Mr. Pierre and the Third Assailant, Ms. Doe suffered significant emotional distress and feels of shame that have plagued her life and personal relationships for 20 years.

~~48.~~55. Ms. Doe knew that speaking out against Defendants would be extremely difficult and that she would likely be subjected to retaliation and defamatory slurs and attacks.

~~49.~~56. However, in November 2023, Ms. Doe read about a lawsuit filed against Mr. Combs by Casandra Ventura a/k/a "Cassie." Ms. Ventura's suit described a decade of physical, sexual and mental abuse. Most triggering for Ms. Doe was reading about Ms. Ventura's allegations of sex trafficking and being forced to have sex with other men against her will. Ms. Doe obviously understands that she too had been sex trafficked, and that Mr. Combs' behavior in forcing women into nonconsensual sex was not an isolated incident or unique only to Ms. Ventura.

~~50.~~57. Then, just days later, Ms. Doe read about a case filed against Mr. Pierre. The suit alleged that Mr. Pierre used his position of power at Bad Boy to groom and sexually assault his former assistant.

~~51.~~58. Seeing two other women bravely speak out against Mr. Combs and Mr. Pierre, respectively, gave Ms. Doe the confidence to tell her story as well. As such, she ~~files~~filed this suit.

FIRST CAUSE OF ACTION
Violation of the Victims of Gender-Motivated Violence Protection Law, N.Y.C. Admin. Code §§ 10-1101, *et seq.* ("VGMVPL")
Against All Defendants

~~52.~~59. Plaintiff repeats and realleges each and every allegation in all of the preceding paragraphs as if fully set forth herein.

60. New York City's Victims of Gender-Motivated Violence Protection Law was first passed in 2000 as a remedial statute intended to correct "the void left by the Supreme Court" when it struck down the federal Violence Against Women Act, VAWA, and "to resolve the difficulty that victims face in seeking court remedies by providing an officially sanctioned and legitimate cause of action for seeking redress for injuries resulting from gender-motivated violence." New York City, Local Law No. 73 Int. 752-A (2000), Sec.1.

61. In June 2022, the City Legislature amended the VGMVPL to include a two year "lookback" period, finding that "any civil claim or cause of action brought under this chapter that is barred because the applicable period of limitation has expired is hereby revived and may be commenced not earlier than six months after, and not later than two years and six months after, September 1, 2022."

~~53.~~62. The above-described conduct of Defendant Mr. Combs, including, but not limited to, Mr. Combs's sexual assault of Plaintiff in New York City, constitutes a "crime of violence" against Plaintiff and is a "crime of violence motivated by gender" as defined in § 10-1103 ("The term 'crime of violence' means an act or series of acts that would constitute a misdemeanor or felony against the person as defined in state or federal law or that would constitute a misdemeanor or felony against property as defined in state or federal law if the conduct presents a serious risk of physical injury to another, whether or not those acts have actually resulted in criminal charges, prosecution, or conviction," and "The term 'crime of violence motivated by gender' means a crime of violence committed because of gender or on the basis of gender, and due, at least in part, to an animus based on the victim's gender.").

~~54.~~63. The above-described conduct of Defendant Mr. Pierre, including, but not limited to, Mr. Pierre's sexual assault of Plaintiff in New York City, constitutes a "crime of violence" against Plaintiff and is a "crime of violence motivated by gender" as defined in § 10-1103 ("The term 'crime of violence' means an act or series of acts that would constitute a misdemeanor or felony against the person as defined in state or federal law or that would constitute a misdemeanor or felony against property as defined in state or federal law if the conduct presents a serious risk of physical injury to another, whether or not those acts have actually resulted in criminal charges, prosecution, or conviction," and "The term 'crime of violence motivated by

gender' means a crime of violence committed because of gender or on the basis of gender, and due, at least in part, to an animus based on the victim's gender.").

~~55.~~64. The above-described conduct of Defendant the Third Assailant, including, but not limited to, the Third Assailant's sexual assault of Plaintiff in New York City, constitutes a "crime of violence" against Plaintiff and is a "crime of violence motivated by gender" as defined in § 10-1103 ("The term 'crime of violence' means an act or series of acts that would constitute a misdemeanor or felony against the person as defined in state or federal law or that would constitute a misdemeanor or felony against property as defined in state or federal law if the conduct presents a serious risk of physical injury to another, whether or not those acts have actually resulted in criminal charges, prosecution, or conviction," and "The term 'crime of violence motivated by gender' means a crime of violence committed because of gender or on the basis of gender, and due, at least in part, to an animus based on the victim's gender.").

~~56.~~65. Defendant Bad Boy Entertainment Holdings, Inc. and Daddy's House Recordings, Inc. enabled ~~Defendants'~~the commission of the crime of violence motivated by gender, and is therefore also liable under the VGMVPL § 10-1104.

~~57.~~66. As a direct and proximate result of the aforementioned crime of violence and gender-motivated violence, Plaintiff has sustained and will continue to sustain, monetary damages, physical injury, pain and suffering, and serious psychological and emotional distress, entitling her to an award of compensatory and punitive damages, injunctive and declaratory relief, attorneys fees and costs, and other remedies as this Court may deem appropriate damages, as set forth in § 10-1104.

~~58.~~67. The above-described conduct of Defendants constitutes a sexual offense as defined in Article 130 of the New York Penal Law.

~~59.~~68. Pursuant to § 10-1105(a), this cause of action is timely because it is commenced within "two years and six months after September 1, 2022."

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays judgment be entered in her favor against Defendants, and each of them, as follows:

A. For a money judgment representing compensatory damages including consequential damages, lost wages, earning, and all other sums of money, together with interest on these amounts, according to proof;

B. For a money judgment for mental pain and anguish and severe emotional distress, according to proof;

C. For punitive and exemplary damages according to proof;

D. For attorneys' fees and costs;

E. For prejudgment and post-judgment interest; and

F. For such other and further relief as the Court may deem just and proper.

Dated: March 29, 2024
New York, New York

Respectfully submitted,

WIGDOR LLP

By: _____

Douglas H. Wigdor
Michael J. Willemin
Meredith A. Firetog

85 Fifth Avenue
New York, New York 10003
Telephone: (212) 257-6800
Facsimile: (212) 257-6845

dwigdor@wigdorlaw.com
mwillemin@wigdorlaw.com
mfiretog@wigdorlaw.com

EXHIBIT B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

JEANNE BELLINO,

Plaintiff,

-against-

24-cv-0712 (LAK)

STEVEN VICTOR TALLARICO a/k/a Steven Tyler,

Defendant

----------x

ORDER

LEWIS A. KAPLAN, *District Judge.*

Plaintiff moves for reconsideration of the Court's order granting defendant's unopposed motion to dismiss.[1] "[R]econsideration will generally be denied unless the moving party can point to controlling decisions or data that the court overlooked."[2] But "[t]he purpose of a motion for reconsideration is . . . . not to seek a different outcome on the basis of an argument that was not made in the first place."[3] This is precisely what plaintiff attempts to do in her memorandum in support of her motion.

Accordingly, the motion for reconsideration is denied. Plaintiff remains free to file a timely motion for leave to amend the complaint.

SO ORDERED.

Dated: March 7, 2024

Lewis A. Kaplan
United States District Judge

---

1 Dkt 12.

2 *Sacerdote v. New York Univ.*, 9 F.4th 95, 118 n.94 (2d Cir. 2021) (quoting *Shrader v. CSX Transp., Inc.*, 70 F.3d 255, 257 (2d Cir. 1995)).

3 *See Shapira v. Charles Schwab & Co.*, 02-cv-0425 (LAK), 2002 WL 31307962, at *1 (S.D.N.Y. Oct. 15, 2002).

EXHIBIT C

MEMO ENDORSED

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT COURT OF NEW YORK

JEANNE BELLINO,

Plaintiff,

-against-

STEVEN VICTOR TALLARICO a/k/a STEVEN TYLER, an individual; and DOES 1 -DOE 50, whose identities are unknown to Plaintiff,

Defendants.

Case No. 1:24-cv-00712-LAK

NOTICE OF MOTION TO AMEND COMPLAINT

ORAL ARGUMENT REQUESTED

Pursuant to Rule 15 of the Federal Rules of Civil Procedure, Plaintiff hereby moves the Court for leave to file an amended complaint. In support of this Motion, Plaintiff relies upon the accompanying Memorandum of Law, dated March 13, 2024, and the exhibits annexed thereto; together with all of the prior pleadings and proceedings in this action.

Dated: March 13, 2024

Respectfully submitted,

/s/ Nahid A. Shaikh

Jeffrey R. Anderson
Nahid A. Shaikh
JEFF ANDERSON & ASSOCIATES, P.A.
363 7th Ave., 12th Floor
New York, NY 10001
Telephone: (646) 759-2551
Email: *Jeff@AndersonAdvocates.com*
Email: *Nahid@AndersonAdvocates.com*

Counsel for Plaintiff

Memorandum Endorsement — Bellino v. Tallarico, 24-cv-0712 (LAK)

Plaintiff purports to bring this action under New York City's Victims of Gender-Motivated Violence Protection Act ("VGMVPA"), N.Y.C. Ad. Code, title 11, §§ 10-1101 *et seq*, to recover damages allegedly sustained by a crime of violence motivated by gender that she claims was committed in approximately 1975 when she was approximately 17 years of age. The matter is before the Court on plaintiff's motion for leave to file an amended complaint. (Dkt 15)

The VGMVPA was enacted by the New York City Council and became effective on December 19, 2000. N.Y.C., N.Y., Local Law No. 73 Int. 752-A (2000). Among other things, it created a cause of action for damages sustained in consequence of crimes of violence motivated by gender. A "crime of violence" was defined in relevant part as "an act or series of acts that would constitute a misdemeanor or felony against the person as defined in state or federal law . . . if the conduct presents a serious risk of physical injury to another, whether or not those acts have actually resulted in criminal charges, prosecution, or conviction." *Id.* at § 8-903(a). And the VGMVPA required also that any action to recover under its provisions "be commenced within seven years after the alleged crime of violence motivated by gender occurred" with exceptions not relevant here in view of the fact that plaintiff reached adulthood decades ago and alleges no disability that impaired her ability to bring suit when she did so. *Id.* at § 8-905(a).

The Court assumes for purposes of this motion – albeit without deciding – that the amended complaint sufficiently alleges that the defendant, in or about 1975, committed a "crime of violence" motivated by gender within the meaning of the VGMVPA. As the VGMVPA was not enacted until approximately 25 years after the alleged crime of violence occurred and does not even purport to be retroactive, the proposed amended complaint would fail to state a legally sufficient claim under that statute even on the Court's assumptions.

Despite the fact that plaintiff premises the proposed amended complaint exclusively on the VGMVPA, the Court recognizes that the facts pleaded at least arguably would have given rise in or about 1975 to a claim for battery. But plaintiff had not then reached an age sufficient to bring suit. The toll by reason of plaintiff's age-based disability would have ended at her eighteenth birthday – in or about 1976. N.Y. CPLR §§ 208, 105(j). The statute of limitations for battery is one year. *Id.* at § 215(3). Accordingly, it would have expired on plaintiff's nineteenth birthday, which was decades ago.

Plaintiff has not contended that her claim is timely on any basis save the VGMVPA. Nevertheless, the Court has considered whether plaintiff's battery claim was revived under either of two potentially relevant state statutes that revived for limited periods certain previously time-barred claims based on sexual offenses, the Adult Survivors Act (the "ASA") and the Child Victims Act (the "CVA"). *Id.* at §§ 214-j, 214-g. But the revival provision of the ASA could not apply here at least because it applies only to harm caused by offenses against persons who were at least eighteen years of age at the time of those offenses. *Id.* at § 214-j. Nor could the analogous provision of the CVA, at least because the revival period thereunder applies only to actions commenced no later than two years and six months after its effective date, which was February 14, 2019. *Id.* at § 214-g. This action was commenced on November 2, 2023, more than four years after the effective date of the CVA.

Accordingly, the motion for leave to amend is denied on the ground of futility. As no other amendment that would save any claim for plaintiff has been suggested or appears, the action is dismissed with prejudice. The Clerk shall close the case.

SO ORDERED.

Dated: April 26, 2024

Lewis A. Kaplan
United States District Judge

EXHIBIT D

The New York City Council

City Hall
New York, NY 10007

Legislation Text

File #: Int 1012-2015, **Version:** A

Int. No. 1012-A

By The Speaker (Council Member Mark-Viverito) and Council Members Chin, Johnson, Koo, Koslowitz, Lander, Richards, Rose, Rosenthal, Rodriguez, Kallos and Menchaca

A Local Law to amend the New York city charter and the administrative code of the city of New York, in relation to making improvements to clarify and strengthen the human rights law, and to repeal and replace section 8-102 of the administrative code of the city of New York, relating to definitions of terms in the human rights law, and to repeal sections 8-103, 8-104, 8-105 and 8-106 of the administrative code of the city of New York, relating to the functions, powers and duties of the commission on human rights and its relations with city departments and agencies

Be it enacted by the Council as follows:

Section 1. Paragraph 8 of subdivision e of section 905 of the New York city charter, as added by a vote of the electors on November 6, 2001, is amended to read as follows:

8. [to] Annual reporting. To submit [an annual] a report by September 30, 2018 and September 30 of each year thereafter to the mayor and the speaker of the council [which shall be published in City Record; and]. Such report shall be published in the City Record and shall include information for the previous fiscal year regarding: (i) inquiries received by the commission from the public; (ii) investigations initiated by the commission; (iii) complaints filed with the commission; and (iv) education and outreach efforts made by the commission.

§ 2. Sections 900, 901, 902, 903, 904, 905 and 906 of the New York city charter, as added by a vote of the electors on November 6, 2001 and paragraph 8 of subdivision e of section 905 as amended by section one of this local law, are amended to read as follows:

§ 900. Declaration of intent. It is [hereby declared as] the public policy of the city [of New York] to promote equal opportunity and freedom from unlawful discrimination through the provisions of the city's

c. [No provision of this chapter shall be construed or interpreted so as to]This chapter does not limit the lawful exercise of any authority vested in the owner or operator of [the]a reproductive health care facility, the owner of the premises in which such a facility is located, or a law enforcement officer of [New York City]the city, the state of New York[State] or the United States acting within the scope of [his or her] such person's official duties.

§ 47. Chapter 9 of title 8 of the administrative code of the city of New York, as added by local law number 73 for the year 2000, is re-designated as a new chapter 11 of title 10 of the administrative code of the city of New York and amended to read as follows:

[CHAPTER 9]CHAPTER 11

ACTIONS BY VICTIMS OF GENDER-MOTIVATED VIOLENCE

[§ 8-901]§ 10-1101 Short [Title]title. This [local law]chapter shall be known and may be cited as the "Victims of Gender-Motivated Violence Protection [Act."]Law".

[§ 8-902]§ 10-1102 Declaration of [Legislative Findings and Intent]legislative findings and intent. Gender-motivated violence inflicts serious physical, psychological, emotional and economic harm on its victims. Congressional findings have documented that gender-motivated violence is widespread throughout the United States, representing the leading cause of injuries to women ages 15 to 44. Further statistics have shown that three out of four women will be the victim of a violent crime sometime during their lives, and as many as [four million]4,000,000 women a year are victims of domestic violence. Senate hearings, various task forces and the United States [Department]department of [Justice]justice have concluded that victims of gender-motivated violence frequently face a climate of condescension, indifference and hostility in the court system and have documented the legal system's hostility towards sexual assault and domestic violence claims. Recognizing this widespread problem, [Congress]congress in 1994 provided victims of gender-motivated violence with a cause of action in federal court through the [Violence Against Women Act]violence against women act (VAWA) ([42 USC § 13981] section 13981 of title 42 of the United States code). In a May 15, 2000,

decision, the United States [Supreme Court]supreme court held that the [Constitution]constitution provided no basis for a federal cause of action by victims of gender-motivated violence against [their]perpetrators of offenses committed against them either under the[Commerce Clause or the Equal Protection Clause of the Fourteenth Amendment] commerce clause or the equal protection clause of the fourteenth amendment. In so ruling, the [Court]court held that it could "think of no better example of the police power, which the Founders denied the National Government and reposed in the States, than the suppression of violent crime and vindication of its victims."

In light of the void left by the [Supreme Court's]supreme court's decision, this [Council]council finds that victims of gender-motivated violence should have a private right of action against [their] perpetrators of offenses committed against them under the [Administrative Code]administrative code. This private right of action aims to resolve the difficulty that victims face in seeking court remedies by providing an officially sanctioned and legitimate cause of action for seeking redress for injuries resulting from gender-motivated violence.

[§ 8-903]§ 10-1103 Definitions. [For purposes of]As used in this chapter, the following terms have the following meanings:

[a. "Crime of violence"]Crime of violence. The term "crime of violence" means an act or series of acts that would constitute a misdemeanor or felony against the person as defined in state or federal law or that would constitute a misdemeanor or felony against property as defined in state or federal law if the conduct presents a serious risk of physical injury to another, whether or not those acts have actually resulted in criminal charges, prosecution, or conviction.

[b. "Crime of violence motivated by gender"]Crime of violence motivated by gender. The term "crime of violence motivated by gender" means a crime of violence committed because of gender or on the basis of gender, and due, at least in part, to an animus based on the victim's gender.

[§ 8-904]§ 10-1104 Civil [Cause of Action]cause of action. Except as otherwise provided by law, any

person claiming to be injured by an individual who commits a crime of violence motivated by gender [as defined in section 8-903 of this chapter, shall have]has a cause of action against such individual in any court of competent jurisdiction for any or all of the following relief:

[1. compensatory]a. Compensatory and punitive damages;

[2. Injunctive]b. Injunctive and declaratory relief;

[3. attorneys']c. Attorney's fees and costs; and

[4. such]d. Such other relief as a court may deem appropriate.

[§ 8-905]§ 10-1105 Limitations. a. A civil action under this chapter [must]shall be commenced within seven years after the alleged crime of violence motivated by gender [as defined in section 8-903 of this chapter]occurred. If, however, due to injury or disability resulting from an act or acts giving rise to a cause of action under this chapter, or due to infancy as defined in the civil procedure law and rules, a person entitled to commence an action under this chapter is unable to do so at the time such cause of action accrues, then the time within which the action must be commenced shall be extended to seven years after the inability to commence the action ceases.

b. Except as otherwise permitted by law, nothing in this chapter entitles a person to a cause of action for random acts of violence unrelated to gender or for acts that cannot be demonstrated, by preponderance of the evidence, to be a crime of violence motivated by gender[as defined in section 8-903].

c. Nothing in this section requires a prior criminal complaint, prosecution or conviction to establish the elements of a cause of action under this chapter.

[§ 8-906]§ 10-1106 Burden of [Proof]proof. Conviction of a crime arising out of the same transaction, occurrence or event giving rise to a cause of action under this chapter [shall be considered]is conclusive proof of the underlying facts of that crime for purposes of an action brought under this chapter. That such crime was a crime of violence motivated by gender must be proved by a preponderance of the evidence.

[§ 8-907]§ 10-1107 Severability. If any section, subsection, sentence, clause, phrase or other portion of

this [local law]chapter is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect.

§ 48. Chapter 10 of title 8 of the administrative code of the city of New York, as added by local law number 73 for the year 2003, is re-designated as a new subchapter 1 of chapter 1 of title 21 of the administrative code of the city of New York and amended to read as follows:

[CHAPTER 10]SUBCHAPTER 1

EQUAL ACCESS TO HUMAN SERVICES

[§ 8-1001]§ 21-189 Short title. This chapter shall be known and may be cited as the "Equal Access to Human Services [Act]Law of 2003[.]".

[§ 8-1002]§ 21-190 Definitions. For purposes of this chapter, the following terms have the following meanings:

[a. "Agency"]Agency. The term "agency" means the human resources administration/department of social services, including any part, subdivision, field office or satellite facility thereof.[b. Agency office. "Agency office" means a job center, food stamp office, medical assistance program office, or other part, subdivision, field office or satellite facility of the agency or agency contractor office that performs a covered function.]

[c. "Agency]Agency contractor. The term "agency contractor" means any contractor that enters into a covered contract with the agency.

Agency office. The term "agency office" means a job center, food stamp office, medical assistance program office or other part, subdivision, field office or satellite facility of the agency or agency contractor office that performs a covered function.

[d. "Agency]Agency personnel. The term "agency personnel" means bilingual personnel or interpreter

EXHIBIT E

The New York City Council

City Hall
New York, NY 10007

Legislation Text

File #: Int 2372-2021, **Version:** B

Int. No. 2372-B

By Council Members Rivera, Brooks-Powers, Yeger, Brannan, Dinowitz, Van Bramer, Koo, Kallos, Cumbo, Menchaca, Rosenthal, Ampry-Samuel, Adams, Ayala, Louis, Grodenchik, Gibson, Levine, D. Diaz, Cornegy, Rose, Lander, Chin, Koslowitz, Feliz, Powers, Salamanca, Reynoso, Cabán and Maisel

A Local Law to amend the administrative code of the city of New York, in relation to creating a two year look-back window to the gender-motivated violence act, and extending its statute of limitations

Be it enacted by the Council as follows:

Section 1. Section 10-1104 of the administrative code of the city of New York, as renumbered and amended by local law 63 for the year 2018, is amended to read as follows:

§ 10-1104 Civil cause of action. Except as otherwise provided by law, any person claiming to be injured by [an individual] a party who commits, directs, enables, participates in, or conspires in the commission of a crime of violence motivated by gender has a cause of action against such [individual] party in any court of competent jurisdiction for any or all of the following relief:

a. Compensatory and punitive damages;

b. Injunctive and declaratory relief;

c. Attorney's fees and costs; and

d. Such other relief as a court may deem appropriate.

§ 2. Subdivision a of section 10-1105 of the administrative code of the city of New York, as renumbered and amended by local law number 63 for the year 2018, is amended to read as follows:

a. A civil action under this chapter shall be commenced within seven years after the alleged crime of violence motivated by gender occurred. If, however, due to injury or disability resulting from an act or acts giving rise to a cause of action under this chapter, or due to infancy as defined in the civil procedure law and

rules, a person entitled to commence an action under this chapter is unable to do so at the time such cause of action accrues, then the time within which the action must be commenced shall be extended to [seven] nine years after the inability to commence the action ceases. Notwithstanding any provision of law that imposes a period of limitation to the contrary, any civil claim or cause of action brought under this chapter that is barred because the applicable period of limitation has expired is hereby revived and may be commenced not earlier than six months after, and not later than two years and six months after, September 1, 2022.

§ 2. This local law takes effect immediately.

LS 17,189
11/30/21
MKW/SMD/ZEH