

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

-----	X	
DIONA PATTERSON, individually and as	:	INDEX NO. 805896/2023
Administrator of the ESTATE OF HEYWARD	:	
PATTERSON; J.P., a minor; BARBARA MAPPS,	:	
individually and as Executrix of the ESTATE OF	:	
KATHERINE MASSEY; SHAWANDA	:	
ROGERS, individually and as Administrator of the	:	
ESTATE OF ANDREW MACKNIEL; A.M., a	:	
minor; and LATISHA ROGERS,	:	
	:	
Plaintiffs,	:	
	:	
-against-	:	
	:	
META PLATFORMS, INC., formerly known as	:	
FACEBOOK, INC.; SNAP, INC.; ALPHABET,	:	
INC.; GOOGLE, LLC; YOUTUBE, LLC;	:	
DISCORD, INC.; REDDIT, INC.;	:	
AMAZON.COM, INC.; 4CHAN, LLC; 4CHAN	:	
COMMUNITY SUPPORT, LLC; GOOD SMILE	:	
COMPANY, INC.; GOOD SMILE COMPANY	:	
US, INC.; GOOD SMILE CONNECT, LLC;	:	
RMA ARMAMENT; VINTAGE FIREARMS;	:	
MEAN L.L.C.; PAUL GENDRON; PAMELA	:	
GENDRON,	:	
	:	
Defendants.	:	

**DEFENDANT 4CHAN COMMUNITY SUPPORT, LLC'S MEMORANDUM OF LAW
IN SUPPORT OF MOTION TO DISMISS PLAINTIFFS' COMPLAINT FOR LACK
OF PERSONAL JURISDICTION PURSUANT TO CPLR 3211(a)(8)**

Abbie Eliasberg Fuchs, Esq.
Ross B. Hofherr, Esq.
100 Wall Street, 23rd Floor
New York, NY 10005
Tel: 212-687-0100
Fax: 212-687-0659
Attorneys for Defendant
4chan Community Support, LLC

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES	ii
PRELIMINARY STATEMENT	1
STATEMENT OF RELEVANT FACTS	2
A. Procedural History	2
B. 4chan CS's Lack of Contacts with New York	3
ARGUMENT	3
I. 4CHAN CS IS NOT SUBJECT TO JURISDICTION IN NEW YORK FOR PLAINTIFFS' CLAIMS	4
A. 4chan CS Is Not Subject To General Jurisdiction	5
B. 4chan CS Is Not Subject To Specific Jurisdiction Related To The Claims In Plaintiffs' Complaint	7
C. Due Process Mandates Dismissal	9
CONCLUSION.....	10

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Abad v. Lorenzo</i> , 163 A.D.3d 903 (2d Dep't 2018)	3
<i>All Parts, Inc. v. U-Haul Metro, No. 15269/10</i> , 2011 N.Y. Misc. LEXIS 287 (Sup. Ct., Nassau County Jan. 27, 2011)	3
<i>Asahi Metal Industry Co., Ltd. v. Superior Court of California, Solano County</i> , 480 U.S. 102 (1987)	7
<i>Avilon Auto. Grp. v. Leontiev, No. 656007/2016</i> , 2020 N.Y. Misc. LEXIS 1285 (Sup. Ct., N.Y. County March 17, 2020)	8, 10
<i>Barber v. Flawless Vape Wholesale & Distrib. Inc., No. 901523-19</i> , 2020 N.Y. Misc. LEXIS 10417 (Sup. Ct., Albany County Feb. 27, 2020)	8-9
<i>Bensusan Restaurant Corp. v. King</i> , 126 F.3d 25 (2d Cir. 1997)	9
<i>BRG Corp. v. Chevron U.S.A., Inc.</i> , 163 A.D.3d 1495 (4th Dep't 2018)	8
<i>C.N.H. v. Levine</i> , 2021 N.Y. Misc. LEXIS 4118, 149 N.Y.S.3d 889 (Sup. Ct. Nassau Co. July 20, 2021)	6
<i>Cianciola v A.O. Smith Water Prods. Co.</i> , 111 A.D.3d 1328 (4th Dep't 2013)	7
<i>D & R Global Selections, S.L. v. Pineiro</i> , 128 A.D.3d 486 (1st Dep't 2015)	5
<i>Daimler AG v. Bauman</i> , 134 S. Ct. 746 (2014)	5, 6
<i>Glazer v Socata, S.A.S.</i> , 170 A.D.3d 1685 (4th Dep't 2019)	7
<i>Goulds Pumps, Inc. v. Mazander Engineered Equip. Co.</i> , 217 A.D.2d 960 (4th Dep't 1995)	8
<i>Kline v. Facebook</i> , 2019 N.Y. Misc. LEXIS 127, 112 N.Y.S.3d 875 (Sup. Ct. New York Co. 2019)	6
<i>Lowy v. Chalkable, LLC</i> , 186 A.D.3d 590 (2d Dep't 2020)	5
<i>Magdalena v. Lins</i> , 123 A.D.3d 600 (1st Dep't 2014)	5

<i>McKee Elec. Co. v. Rauland–Borg Corp.</i> , 20 N.Y.2d 377 (1967)	7
<i>Stern v. Four Points by Sheraton Ann Arbor Hotel</i> Stern v. Four Points by Sheraton Ann Arbor Hotel, 133 A.D.3d 514	9
<i>Symenow v. State Street Bank and Trust Co.</i> , 244 A.D.2d 880 (4th Dep’t 1997)	8
<i>Williams v. Beemiller, Inc.</i> , 33 N.Y.3d 523 (2019)	9

Statutes

NY CLS CPLR § 301	4, 5, 8
NY CLS CPLR § 302	1, 7, 9, 10
NY CLS CPLR R 3211	<i>passim</i>

PRELIMINARY STATEMENT

Defendant 4chan Community Support, LLC (“4chan CS” or “Defendant”), by counsel, respectfully submits this Memorandum of Law in Support of its Motion to Dismiss Plaintiffs’ Complaint for Lack of Personal Jurisdiction Pursuant to CPLR 3211(a)(8) (the “Motion”), because 4chan CS is not subject to personal jurisdiction in New York for the claims in the Complaint.

Plaintiffs allege that various social media companies, including 4chan CS¹, allowed “racist, antisemitic, and violence-promoting material” posted by third-party users on their websites to radicalize Payton Gendron and motivate him to commit the May 14, 2022 mass shooting at Tops Friendly Market. See Plaintiffs’ Verified Complaint (the “Complaint”), ¶¶ 4-16. Plaintiffs also assert various claims against the companies that sold or manufactured the shooter’s weapon and body armor, and the shooter’s parents. Plaintiffs seek to assert jurisdiction over 4chan CS, a Delaware corporation with no physical offices and its only mailing address in Michigan, by asserting that 4chan CS “purposefully availed itself” of New York law by “transacting business in this State, profits from 4chan’s activities in the State of New York, and Plaintiffs’ injuries arise out of and relate to 4chan Community Support’s purposeful availment.” See Complaint, ¶ 30.

4chan CS, as a non-domiciliary without a principal place of business in New York, is not subject to general personal jurisdiction in New York state for the claims asserted by Plaintiffs. To establish that the Court can exercise specific personal jurisdiction over 4chan, Plaintiffs must show that 4chan CS’s “contacts” with New York fall within the ambit of CPLR 302 and that the exercise of personal jurisdiction comports with due process. Plaintiffs have done neither. Plaintiffs have not connected this forum to any of 4chan CS’s alleged conduct related to this action – 4chan CS

¹ Plaintiffs’ Complaint collectively refers to Defendants Meta Platforms, Inc., formerly known as Facebook, Inc.; Snap, Inc; Alphabet, Inc.; Google, LLC; YouTube, LLC; Discord, Inc.; Reddit, Inc.; Amazon.com, Inc.; 4chan, LLC; 4chan Community Support, LLC; Good Smile Company, Inc.; Good Smile Company US; and Good Smile Connect, LLC as the “Social Media Defendants.”

has no physical offices, personnel, mailing addresses, real estate, bank accounts, tax filings, or operations tied to New York, and has never registered to conduct business in the State of New York. See Affidavit of Hiroyuki Nishimura (“Nishimura Aff.”), ¶¶ 3-10. In fact, the only alleged “contacts” between 4chan CS and the State of New York are centered on the fact that the shooter allegedly visited the 4chan CS website while in New York. Plaintiffs essentially allege that the shooter reached out of New York to access the 4chan website, not that 4chan CS reached into New York to contact the shooter as would be required for this Court to assert jurisdiction. Under New York law, Plaintiffs have failed to demonstrate the “minimum contacts” required to establish personal jurisdiction over a non-domiciliary in New York state courts.

As such, 4chan CS requests that this Court enter an Order: (1) granting this Motion; (2) dismissing Plaintiffs’ claims against 4chan CS, with prejudice, under CPLR 3211(a)(8) because 4chan CS is not subject to personal jurisdiction in New York for the claims in the Complaint; and (3) for such other and further relief as the Court deems just and proper.

STATEMENT OF RELEVANT FACTS

A. Procedural History

Plaintiffs commenced this action through the filing of a Summons and Verified Complaint on May 12, 2023, alleging claims arising from the mass shooting by Payton Gendron at Tops Friendly Market in Buffalo, New York on May 14, 2022. See generally Complaint, ¶¶ 4-16. On July 13, 2023, Plaintiffs and the Social Media Defendants entered into a stipulation governing the briefing of pre-answer motions to dismiss, setting a deadline of August 18, 2023 for the Social Media Defendants to serve an omnibus brief addressing common legal issues, individual briefs addressing jurisdictional issues, and individual briefs addressing substantive issues. 4chan CS now moves to dismiss Plaintiffs’ Complaint pursuant to CPLR 3211(a)(8) for lack of personal

jurisdiction. 4chan CS's substantive dismissal arguments are addressed in its separate Partial Joinder to the Internet-Defendants' Motion to Dismiss Pursuant to CPLR 3211(a)(7).

B. 4chan CS's Lack of Contacts with New York

4chan Community Support, LLC is a limited liability company organized under the laws of the State of Delaware. See Nishimura Aff., ¶ 2. It has no physical offices, personnel, mailing addresses, real estate, bank accounts, or tax filings in the State of New York. Id. at ¶¶ 4-9. 4chan CS's mailing address is 2885 Sanford Avenue SW # 34441, Grandville, Michigan 49418, its personnel reside in Canada and France, and it has no physical offices. Id. at ¶¶ 4-6. 4chan CS does not have any operations centered on the State of New York, and does not have advertising that focuses specifically on New York residents. Id. at ¶10. In addition, 4chan CS has never registered to conduct business in the State of New York. Id. at ¶ 3.

ARGUMENT

4chan CS, as a corporation organized under Delaware law, no physical offices, and its only mailing address in Michigan, is not subject to personal jurisdiction in New York for the claims asserted by Plaintiffs, and Plaintiffs' bare-bones jurisdictional pleadings fail to allege any facts that would otherwise confer jurisdiction over a non-domiciliary under New York's long-arm statute. Dismissal is thus appropriate under CPLR 3211(a)(8). See Abad v. Lorenzo, 163 A.D.3d 903, 905 (2d Dep't 2018) (granting CPLR 3211(a)(8) motion and dismissing Dram Shop claims against non-resident corporate entities); All Parts, Inc. v. U-Haul Metro, No. 15269/10, 2011 N.Y. Misc. LEXIS 287, at *16 (Sup. Ct., Nassau County Jan. 27, 2011) (dismissing non-resident, foreign headquartered franchisor for lack of personal jurisdiction despite allegations of financial transactions).

As 4chan CS is not subject to jurisdiction in New York for the claims in Plaintiffs' Complaint, the Complaint should be dismissed as to 4chan CS, with prejudice.

I. 4CHAN CS IS NOT SUBJECT TO JURISDICTION IN NEW YORK FOR PLAINTIFFS' CLAIMS

In a personal injury suit in New York, personal jurisdiction only exists where the plaintiff established that there is general jurisdiction, *i.e.* the defendant is subject to suit in the jurisdiction for any purpose, or there is specific jurisdiction, *i.e.* the defendant is subject to suit in the jurisdiction related to the claims in the complaint. See CPLR 301. Plaintiffs cannot establish either general or specific jurisdiction as to 4chan CS.

Plaintiffs' jurisdictional allegation against 4chan CS broadly asserts that "4chan Community Support LLC has purposefully availed itself of New York law by transacting business in this State, profits from 4chan's activities in the State of New York, and Plaintiffs' injuries arise out of and relate to 4chan Community Support's purposeful availment. New York's assertion of personal jurisdiction over 4chan Community Support therefore is consistent with historic notions of fair play and substantial justice." See Complaint, ¶ 30. Plaintiffs fail to substantiate their vague assertion that 4chan CS "transact[s] business in this State." The reason is simple: that statement is inaccurate. In fact, 4chan Community Support, LLC does not have any offices or personnel in New York, has never registered to conduct business in New York, has no mailing addresses, real estate, bank accounts, or tax filings in New York, and has, at most, an exceedingly limited connection to New York. See Nishimura Aff., ¶ 3-9. Plaintiffs' inaccurate representation of 4chan CS's operations is explained, in part, by the fact that Plaintiffs also make the identical allegations of "transacting business in this State" and "profit[ing] from activities in the State of New York" against Social Media Defendants Meta, Snap, Alphabet, Discord, Reddit, and Amazon – all of

which are also registered as foreign corporations with the New York Department of State. See Complaint, ¶¶ 23-28.

As a result, Plaintiffs cannot establish that 4chan CS is subject to jurisdiction in New York for the claims in the Complaint, and dismissal is thus appropriate under CPLR 3211(a)(8).

A. 4chan CS Is Not Subject To General Jurisdiction

Generally, general jurisdiction is appropriate only if a company is incorporated in New York or has its principal place of business in New York. See Daimler AG v. Bauman, 134 S. Ct. 746, 761 (2014) (holding a corporation is “at home” and subject to general personal jurisdiction in its state of incorporation and/or the state of its principal place of business); Lowy v. Chalkable, LLC, 186 A.D.3d 590, 591 (2d Dep’t 2020) (“Aside from an exceptional case, a corporation is at home only in a state that is the company's place of incorporation or its principal place of business.”); D & R Global Selections, S.L. v. Pineiro, 128 A.D.3d 486, 487 (1st Dep’t 2015) (“As defendant neither is incorporated in New York State nor has its principal place of business here, New York Courts may not exercise jurisdiction over it under CPLR 301.”); Magdalena v. Lins, 123 A.D.3d 600, 601 (1st Dep’t 2014) (“There is no basis for general jurisdiction pursuant to CPLR 301, since [defendant] is not incorporated in New York and does not have its principal place of business in New York”).

Here, Plaintiffs fail to allege any facts that would suggest that New York courts have general jurisdiction over 4chan CS because no such facts exist. 4chan CS is neither incorporated in New York nor has its principal place of business there. 4chan CS is incorporated in Delaware (which Plaintiffs acknowledge in Paragraph 30 of their Complaint), has no physical offices, and has its only mailing address in Michigan. See Nishimura Aff., ¶¶ 2, 4, 6. There is simply no basis for general personal jurisdiction over 4chan CS in New York.

Although these general jurisdiction principles apply to all industries, New York courts have specifically refused to confer general jurisdiction over internet companies with greater ties to New York than 4chan CS. In Kline v. Facebook, 2019 N.Y. Misc. LEXIS 127, 112 N.Y.S.3d 875 (Sup. Ct. New York Co. 2019), the plaintiff claimed general jurisdiction in New York over Facebook (a Delaware Corporation with its principal place of business in California and offices in New York) and Google (a Delaware corporation with its principal place of business in California and an office in New York). Kline, 112 N.Y.S.3d at *2. The plaintiff asserted that the court had jurisdiction over both Facebook and Google because they “maintained offices in New York and ‘continuously and systematically conduct[ed] business’ in New York.” Id. Facebook and Google opposed, citing the Daimler decision, in which the United States Supreme Court determined that a court has general jurisdiction over a foreign corporation when the corporations “affiliations...are so continuous and systematic as to render it essentially at home [in a particular state]”, i.e., the state ‘where [it] is incorporated or has its principal place of business.’” Id., citing Daimler, 134 S. Ct. at 761. The court held there was no general jurisdiction over Facebook or Google, finding that even the presence of offices in New York failed to establish the required “continuous and systematic” affiliations with the State of New York to confer general jurisdiction. Id. at *3. See also C.N.H. v. Levine, 2021 N.Y. Misc. LEXIS 4118, 149 N.Y.S.3d 889 (Sup. Ct. Nassau Co. July 20, 2021) (finding that Facebook’s contacts with New York were not so “continuous and systematic” as to confer general jurisdiction, even as a foreign corporation which conducts business and maintains an office in New York).

Similarly, Plaintiffs here have failed to establish that 4chan CS has the required “continuous and systematic” affiliations with New York to confer general jurisdiction. Like the defendants in Kline and C.N.H., 4chan is a foreign corporation without a principal place of

business in New York. In fact, 4chan CS has even weaker ties to New York than the defendants in Kline and C.N.H. because it does not maintain any physical offices or personnel within the state. See Nishimura Aff., ¶ 4-5. As such, 4chan CS is not subject to general jurisdiction in New York.

B. 4chan CS Is Not Subject To Specific Jurisdiction Related To The Claims In Plaintiffs' Complaint

Under New York's long-arm statute, a court may exercise specific personal jurisdiction over a non-domiciliary only where the non-domiciliary "in person or through an agent . . . transacts any business within the state or contracts anywhere to supply goods or services in the state," CPLR 302(a), provided that the non-domiciliary's activities "were purposeful and there is a substantial relationship between the transaction and the claim asserted." Glazer v Socata, S.A.S., 170 A.D.3d 1685, 1686 (4th Dep't 2019); Cianciola v A.O. Smith Water Prods. Co., 111 A.D.3d 1328, 1328 (4th Dep't 2013) (affirming dismissal of claims against non-resident defendant because "plaintiff did not establish the requisite substantial relationship between defendant's transaction of business and plaintiff's claims against the defendant").

"Purposeful activity" sufficient to trigger jurisdiction is "some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." McKee Elec. Co. v. Rauland-Borg Corp., 20 N.Y.2d 377, 382 (1967); see also Asahi Metal Industry Co., Ltd. v. Superior Court of California, Solano County, 480 U.S. 102, 108-09 (1987) ("[s]ubstantial connection between defendant and forum state necessary for finding of minimum contacts must come about by action of defendant purposefully directed toward forum state").

Here, there is no basis to exercise jurisdiction over 4chan CS under New York's long-arm statute because 4chan CS lacks the required "minimum contacts" with the forum. 4chan Community Support, LLC is a limited liability company organized under the laws of the State of

Delaware. See Nishimura Aff., ¶ 2. It has no physical offices, personnel, mailing addresses, real estate, bank accounts, or tax filings in the State of New York. Id. at ¶¶ 4-9. 4chan CS's mailing address is 2885 Sanford Avenue SW # 34441, Grandville, Michigan 49418, its personnel reside in Canada and France, and it has no physical offices. Id. at ¶¶ 4-6. 4chan CS does not have any operations centered on the State of New York, and does not have advertising that focuses specifically on New York residents. Id. at ¶10. In addition, 4chan CS has never registered to conduct business in the State of New York. Id. at ¶ 3. As such, 4chan CS has not purposely availed itself of the benefits of New York. See BRG Corp. v. Chevron U.S.A., Inc., 163 A.D.3d 1495, 1495 (4th Dep't 2018) ("It is undisputed that defendant, a foreign corporation with no present contacts in this State, is not subject to personal jurisdiction in New York under either CPLR 301 or 302(a)"); Goulds Pumps, Inc. v. Mazander Engineered Equip. Co., 217 A.D.2d 960, 961 (4th Dep't 1995) ("The record does not support plaintiff's contention that defendant engaged in sufficient purposeful activity in New York to confer personal jurisdiction over defendant"); Symenow v. State Street Bank and Trust Co., 244 A.D.2d 880, 880-881 (4th Dep't 1997) (holding the court lacked personal jurisdiction over a defendant who did not transact any business in New York or have a contract with the plaintiff).

Bare-bones, conclusory jurisdictional allegations like those in Plaintiffs' Complaint are insufficient to demonstrate long-arm jurisdiction over 4chan. See, e.g., Aylon Auto. Grp. v. Leontiev, No. 656007/2016, 2020 N.Y. Misc. LEXIS 1285, at *30 (Sup. Ct., N.Y. County March 17, 2020) (stating that "bare-bones and conclusory allegations are insufficient both to demonstrate long-arm jurisdiction . . . and to qualify as a sufficient start to warrant jurisdictional discovery"); Barber v. Flawless Vape Wholesale & Distrib. Inc., No. 901523-19, 2020 N.Y. Misc. LEXIS

10417, at *15 (Sup. Ct., Albany County Feb. 27, 2020) (stating that bare conclusory allegations cannot defeat a personal jurisdiction motion). Therefore, dismissal is proper.

C. Due Process Mandates Dismissal

Even if the long-arm statute permitted the exercise of jurisdiction over 4chan CS, and here it does not, the “court may not exercise personal jurisdiction over a non-domiciliary unless two requirements are satisfied: the action is permissible under the long-arm statute (CPLR 302) and the exercise of jurisdiction comports with due process.” Williams v. Beemiller, Inc., 33 N.Y.3d 523, 528 (2019) (“Due process requires that a nondomiciliary have certain minimum contacts with the forum and that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.”); Bensusan Restaurant Corp. v. King, 126 F.3d 25, 27 (2d Cir. 1997) (after determining if jurisdiction is appropriate, “the court then must decide whether such exercise comports with the requisites of due process.”). Here, 4chan CS lacks “minimum contacts with the forum State” because it does not “purposefully avail[] itself of the privilege of conducting activities within the forum State” such that it is “invoking the benefits and protections of the forum state’s laws.” Williams, 33 N.Y.3d at 529. As such, the exercise of jurisdiction over 4chan CS would offend traditional notions of justice and should be rejected.

In Stern v. Four Points by Sheraton Ann Arbor Hotel, dismissal of a personal injury claim against an out-of-state hotel owner was proper where the owner’s activity of running an interactive website allowing New York residents to book a room “and plaintiff’s negligence action arising from an allegedly defective condition of premises in [the hotel] is too remote to support the exercise of long-arm or specific jurisdiction under CPLR 302.” Stern v. Four Points by Sheraton Ann Arbor Hotel, 133 A.D.3d 514, 514 (1st Dep’t 2015).

Here, Plaintiffs fail to adequately allege that 4chan CS has the requisite “minimum contacts” with New York to confer personal jurisdiction. Forcing non-domiciliary corporations to litigate a claim in New York arising from the intentional criminal acts of a third-party reflects an unfair and unjustified burden on 4chan CS and similarly situated co-defendants. 4chan CS’s “contacts” here – seemingly centered around the fact that the shooter allegedly reached from New York to visit the 4chan website outside of New York – is far too remote to constitute an “articulable nexus or substantial relationship” between 4chan CS’s alleged New York contacts and the Plaintiffs’ claims. See Avilon, 2020 N.Y. Misc. LEXIS 1285, at *28. Under these circumstances, the exercise of long-arm or specific jurisdiction under CPLR 302 is not warranted.

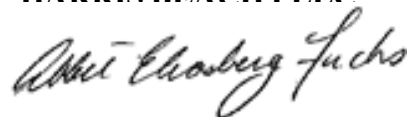
As 4chan CS is not subject to suit in New York for the allegations in Plaintiffs’ Complaint, Plaintiffs’ claims must be dismissed as to 4chan CS.

CONCLUSION

For the foregoing reasons, 4chan Community Support, LLC respectfully requests that the Court enter an Order: (1) granting this Motion; (2) dismissing Plaintiffs’ claims against 4chan CS, with prejudice, under CPLR 3211(a)(8) because 4chan CS is not subject to personal jurisdiction in New York for the claims in the Complaint; and (3) for such other and further relief as the Court deems just and proper.

Dated: September 1, 2023
New York, New York

HARRIS REACH PLLC



Abbie Eliasberg Fuchs, Esq.
Ross B. Hofherr, Esq.
100 Wall Street, 23rd Floor
New York, NY 10005
Tel: 212-687-0100
Fax: 212-687-0659
Attorneys for Defendant
4chan Community Support, LLC

WORD COUNT CERTIFICATION

I, Abbie Eliasberg Fuchs, certify that the total word count in my Memorandum of Law is 3,117 words and it complies with the 6,000-word limit set by the parties' Stipulation in this matter. NYSCEF Doc. No. 45.

Dated: September 1, 2023



Abbie Eliasberg Fuchs, Esq.