MAYER | BROWN

Mayer Brown LLP
1221 Avenue of the Americas
New York, NY 10020-1001
United States of America

T: +1 212 506 2500
F: +1 212 262 1910

mayerbrown.com

Gabrielle Levin
Partner
T: +1 212 506 2229
GLevin@mayerbrown.com

October 2, 2024

VIA ECF AND E-MAIL
[FAILLA_NYSDCHAMBERS@NYSD.USCOURTS.GOV]

The Honorable Katherine Polk Failla
United States District Court
for the Southern District of New York
Thurgood Marshall U.S. Courthouse
40 Foley Square, Room 2103
New York, NY 10007

Re: *Christine O'Reilly v. ICAP Corporates LLC, et al.*
Case No. 24-cv-5913 (KPF)

Dear Judge Failla:

On behalf of defendants Citigroup Global Markets Limited ("CGML") and Citigroup Inc. (collectively, the "Citi defendants"), and pursuant to 4(A) of Your Honor's Individual Rules, we write to request a pre-motion conference on the Citi defendants' anticipated motion to dismiss.

Introduction

Plaintiff is an employee of a different defendant—ICAP Corporates LLC ("ICAP")—who has sued the Citi defendants for discrimination, retaliation, and negligence. Plaintiff alleges that her supervisor at ICAP "coerce[d]" her "into submitting to unwanted sexual advances" from Benjamin Waters—a former employee of CGML based in the United Kingdom. Compl. ¶¶ 2, 4. The Citi defendants support a safe and healthy work environment where all people are treated with respect, and they have robust policies strictly prohibiting any form of discrimination, harassment, or retaliation. The Citi defendants deny they had knowledge of any inappropriate behavior towards Plaintiff.

The Citi defendants are not proper parties to this case. As set forth below, and as will be expanded on in the Citi defendants' motion to dismiss, Plaintiff's Complaint fails to state a claim against the Citi defendants, and the claims against the Citi defendants suffer from a number of other fatal defects, including lack of personal jurisdiction, insufficient service of process, and improper group pleading. For these reasons, the claims against the Citi defendants must be dismissed.

Plaintiff Has Failed to Plausibly Allege Claims for Discrimination, Retaliation, and Negligence Against the Citi Defendants

Plaintiff is an employee of ICAP; she was never employed by the Citi defendants. Compl. ¶ 18. The lack of an employment relationship between Plaintiff and the Citi defendants is fatal to Plaintiff's claims for discrimination and retaliation under the New York State Human Rights Law ("NYSHRL") and the New York City Human Rights Law ("NYCHRL"). *See Kilkenny v. Greenberg Traurig, LLP*, 2006 WL 1096830, at *4 (S.D.N.Y. Apr. 26, 2006) ("[a]n employer-employee relationship is required to sustain a claim under" the NYSHRL and NYCHRL). Accordingly, Causes of Action III, IV, V, and VI must be dismissed as to the Citi defendants.

Plaintiff's claim for aiding and abetting discrimination in violation of the NYSHRL and the NYCHRL (Cause of Action VII) must also be dismissed as to the Citi defendants. "Aiding and abetting liability requires that the aider and abettor share the intent or purpose of the principal actor, and there can be no partnership in an act where there is no community of purpose." *Fried v. LVI Servs., Inc.*, 2011 WL 2119748, at *7 (S.D.N.Y. May 23, 2011). "[T]o find that a defendant actually participated in the discriminatory conduct requires a showing of direct, purposeful participation." *Id.* Here, like in *Fried*, the Complaint is utterly devoid of allegations that the Citi defendants—the alleged aider and abettor—intended to, let alone actually, participated in any discrimination of Plaintiff.

Plaintiff's negligent retention and supervision claim against the Citi defendants (Cause of Action VIII) fails to state a claim. To state a claim for negligent hiring or supervision, "in addition to the standard elements of negligence," a plaintiff must show: "(1) that the tortfeasor and the defendant were in an employee-employer relationship; (2) that the employer knew or should have known of the employee's propensity for the conduct which caused the injury prior to the injury's occurrence; and, (3) that the tort was committed on the employer's premises or with the employer's chattels." *Doe v. Alsaud*, 12 F. Supp. 3d 674, 680 (S.D.N.Y. 2014). Here, the Citi defendants did not owe Plaintiff a duty—an essential element of a negligence claim—because she was not their employee. *Ritchie Cap. Mgmt., L.L.C. v. Gen. Elec. Cap. Corp.*, 121 F. Supp. 3d 321, 332 (S.D.N.Y. 2015), *aff'd*, 821 F.3d 349 (2d Cir. 2016). And the Complaint fails to allege that the Citi defendants "knew or should have known" of Mr. Waters's propensity for inappropriate behavior before it occurred. *Doe*, 12 F. Supp. 3d at 680-681 (dismissing negligent retention and supervision claim for failure to plead employer knowledge of prior misconduct).

Finally, because the NYSHRL, NYCHRL, and negligence claims are all subject to a three-year statute of limitations, the Citi defendants cannot be sued for any alleged acts occurring before August 5, 2021.

The Citi Defendants Should be Dismissed for Lack of Jurisdiction and Other Defects

1. CGML is not subject to personal jurisdiction in New York. CGML is a United Kingdom entity, headquartered in the United Kingdom, that is "Citi's international broker dealer." Compl. ¶ 24. As a United Kingdom entity, this Court cannot exercise general personal jurisdiction over CGML. *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011). CGML is also not subject to specific jurisdiction in New York. Plaintiff's claims do not "arise from [CGML's] purposeful contacts with the forum" (*Waldman v. Palestine Liberation Org.*, 835 F.3d 317, 343, 343 (2d Cir. 2016)), because the claims against CGML are based on Mr. Waters's supposed harassment of Plaintiff—that conduct was outside the scope of Mr. Waters's employment and thus cannot give rise to personal jurisdiction over CGML. *See Edwardo v. Roman Cath. Bishop of Providence*, 66 F.4th 69, 74 (2d Cir. 2023) (no personal jurisdiction over out-of-state employer based on misconduct committed by employee in New York). The claims against CGML should therefore be dismissed pursuant to Fed. R. Civ. P. 12(b)(2).

2. The claims against CGML should separately be dismissed for insufficient service of process under Fed. R. Civ. P. 12(b)(5). Plaintiff has filed an affidavit of service stating that CGML was served via "personal service" by leaving a copy of the papers with an individual in CGML's mail room in the United Kingdom. (Dkt. No. 37.) However, under United Kingdom Civil Procedure Rule 6.5, personal service on a U.K. corporation requires service on "a person holding a senior position within the company or corporation," which is defined in United Kingdom Practice Direction 6.2 as "a director, the treasurer, the secretary of the company or corporation, the chief executive, a manager or other officer of the company or corporation."

3. Citigroup Inc. ("Citigroup") is not a proper defendant to this suit. Citigroup is the publicly-traded holding company; Citigroup conducts business through its subsidiaries and affiliates. Moreover, the Complaint does not allege that Citigroup engaged in *any* independent conduct related to the suit. The sole allegation concerning Citigroup is Paragraph 25, which states:

> Citi and CGML UK operate as a single integrated enterprise with respect to their employees, including Mr. Waters. Upon information and belief, they share common management, ownership and interrelated operations. As such, they should be considered a single employer for the purposes of this action.

Compl. ¶ 25. This lone allegation comes nowhere close to plausibly alleging facts to establish that Citigroup and CGML can be sued as a single employer. A party "must do more than simply state legal conclusions and recite the elements of the 'single employer' standard to survive a motion to dismiss," and the Complaint fails to do that. *Fried*, 2011 WL 2119748, at *5.

4. In violation of Fed. R. Civ. P. 8(a), the Complaint fails to distinguish the alleged conduct of each defendant and instead engages in improper group pleading. *See Wilson v. Cnty. of Ulster*, 2022 WL 813958, *7 (N.D.N.Y. Mar. 17, 2022) ("Complaints that rely on group pleading and fail to differentiate as to which defendant was involved in the alleged unlawful conduct are insufficient to state a claim.") (internal citations omitted). For example, the Complaint alleges that "[d]efendants" discriminated against Plaintiff by subjecting her to a hostile work environment (Compl. ¶ 163), and that "[d]efendants" retaliated against Plaintiff by removing her from work communications or denying her access to her work email (Compl. ¶ 170). Not only do these allegations improperly lump all defendants together, but they are implausible as to the Citi defendants, who did not employ Plaintiff and therefore had no control over her work environment or her access to work communications.

For the foregoing reasons, the Citi defendants intend to seek dismissal of the Complaint.

Respectfully submitted,
/s/ Gabrielle Levin
Gabrielle Levin

cc: All counsel of record (via ECF)