**UNITED STATES DISTRICT COURT**
**DISTRICT OF CONNECTICUT**

FARVA JAFRI,

Plaintiff,

v.

THE TOWN OF NEW CANAAN, STACEY MILTENBERG, In her individual and official capacity, LISA PIA, In her individual and official capacity, PETER OGILVIE, In his individual and official capacity, STUART STRINGFELLOW, in his individual and official capacity, THE NEW CANAANITE—NEWSHOUND LLC, MICHAEL DINAN, NEW CANAAN ADVERTISER, GRACE DUFFIELD, STAMFORD ADVOCATE, ALFRED BRANCH, PATCH.COM, and GREGORY "GREGG" HILTON,

Defendants.

Civil Action No. 3:21-cv-963 (KAD)
ECF Case

**MEMORANDUM OF LAW IN SUPPORT OF MICHAEL DINAN AND NEWSHOUND LLC'S MOTION TO DISMISS UNDER FED. R. CIV. P. 12(b)(5), (6) AND SPECIAL MOTION TO DISMISS UNDER CONN. GEN. STAT. § 52-196a**

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## PRELIMINARY STATEMENT

In this civil rights action, plaintiff Farva Jafri alleges that the Town of New Canaan and several of its officials violated various provisions of the United States Constitution in issuing and upholding a parking ticket against her. Appended to plaintiff's constitutional claims against the town defendants are defamation and false light counts against several members of the press, including Michael Dinan and the New Canaanite—Newshound LLC (the "*New Canaanite*") (collectively, the "Dinan Defendants"), who reported on the hearing of the New Canaan Parking Commission at which the parking ticket was upheld. Plaintiff also asserts a claim of common law assault against Mr. Dinan.

Plaintiff's allegations are far from sufficient to state any plausible claim upon which relief can be granted against the Dinan Defendants. The defamation claim is time-barred. The complaint fails to identify a purportedly false and defamatory statement, or when and to whom it was allegedly published, or to plead any facts that could plausibly demonstrate the fault required for either a claim of defamation or false light. The assault claim equally fails to plead essential elements of a claim and amounts to nothing more than a gripe against Mr. Dinan for approaching plaintiff to take a picture on his cell phone during the hearing. Plaintiff's claims against the Dinan Defendants should all be dismissed for failure to state a claim.

These claims should also be dismissed for insufficient service of process. Plaintiff's affidavits of service indicate that the summonses and copies of the complaint were left with someone named "Graham" at the *New Canaanite*'s offices. But no such person is employed by the *New Canaanite* or authorized to accept service of process on behalf of it or Mr. Dinan. No proper service was made under the Federal Rules of Civil Procedure and the Connecticut General Statutes.

Beyond these multiple grounds for dismissal, this Court should dismiss the complaint against the Dinan Defendants under Connecticut's anti-Strategic Litigation Against Public Participation ("anti-SLAPP") statute. The anti-SLAPP statute provides substantive rights to Connecticut residents, insulating the press and public from the costs of defending against meritless complaints like this one challenging a report on matters of public concern. Because plaintiff's claims are based on the Dinan Defendants' exercising their right to free speech on a matter of public concern – a government hearing – and plaintiff cannot demonstrate probable of success on the claims, the Court should dismiss her complaint and grant the Dinan Defendants their reasonable costs and attorneys' fees pursuant to the anti-SLAPP statute.

## BACKGROUND

### A. Plaintiff's Dispute Over a New Canaan Parking Ticket

Plaintiff's complaint centers primarily on alleged racial and religious discrimination by the Town of New Canaan and several of its officials. According to the complaint,[1] plaintiff received a parking ticket from defendant Lisa Pia, a New Canaan parking officer, while waiting for an Uber passenger in a "No Parking" zone. Complaint ("Compl.") ¶¶ 33-34. Plaintiff claims she was seated in the driver's seat with the lights on and the engine running. *Id*. ¶ 33. Plaintiff received the ticket and informed Ms. Pia that she was simply "standing," not parked, with Ms. Pia responding that plaintiff could contest the ticket. *Id*. ¶ 34. Plaintiff alleges that Ms. Pia did not issue tickets for other drivers who were "standing" and that those other motorists drove more expensive cars. *Id*. ¶ 35.

[1] The Dinan Defendants do not concede the truth of any allegations in the complaint but assume their truth solely for purposes of this motion. *See Koch v. Christie's Int'l PLC*, 699 F.3d 141, 145 (2d Cir. 2012).

Plaintiff appealed her parking ticket, and on July 11, 2019, the New Canaan Parking Commission held a hearing on her appeal. *Id*. ¶¶ 38-41. According to the complaint, the town presented Ms. Pia as a witness but failed to call any witness testimony for the white appellant appearing prior to her. *Id*. ¶ 43. Plaintiff further alleges that Ms. Pia lied when testifying by claiming that the car was parked and that plaintiff was sitting in the passenger's seat. *Id*. ¶ 44. The Parking Commission upheld plaintiff's ticket. *Id*. ¶¶ 48, 52.

Plaintiff filed this action on July 12, 2021, asserting civil rights claims against the Town of New Canaan, Ms. Pia, New Canaan's Parking manager, and the three Parking Commissioners who presided over her hearing. She also asserts a municipal liability claim against the town.

**B. Plaintiff's Claims Against the Dinan Defendants**

The complaint purports to assert tag-along claims for defamation and false light against the Dinan Defendants and six other press defendants, challenging their reporting on the Parking Commission hearing. As to the Dinan Defendants, the complaint alleges only that they "published statements that were not made by Jafri in some instances and not made by Pia in other instances," but fails to identify those statements. Compl. ¶ 48. The complaint does not identify any purportedly false statement made by the Dinan Defendants, nor allege when and to whom any statements were made. It does not allege any facts that would establish that the Dinan Defendants knew or had reason to know the falsity of any alleged statements made concerning plaintiff. Notably, plaintiff also alleges no retraction demand made on the Dinan Defendants and alleges no pecuniary damages caused by their reporting.

The complaint also asserts a claim for assault against Mr. Dinan individually. It alleges that during the hearing Mr. Dinan "hovered over" plaintiff with a "phone camera" and "approached [her] within a few feet, sticking a phone in her face while [she] asked him to cease

and desist." *Id*. ¶ 49. The complaint does not plausibly allege any threatening acts or statements by Mr. Dinan, or any facts that would establish that he approached her for any reason other than to photograph the hearing with his "phone camera." *Id*.

### C. Plaintiff's Purported Service of Process

Plaintiff has filed affidavits of service claiming that the Dinan Defendants had been served with a summons and copy of the complaint on August 24, 2021. Dkts 27, 29. According to these affidavits, the process server delivered these documents to an individual named Graham at 140 Elm Street in New Canaan. *Id*. 140 Elm Street houses the *New Canaanite*'s office and the offices of several other business with which Mr. Dinan is not affiliated. Declaration of Michael Dinan dated September 13, 2021 ("Dinan Decl.) ¶¶ 2. Mr. Dinan lives in Stamford and does not reside at 140 Elm Street in New Canaan. Dinan Decl. *Id*. ¶ 3. No individual called "Graham" is employed by the *New Canaanite* or is authorized by law to receive service of process on behalf of it or Mr. Dinan. *Id*. ¶ 6.

No such individual notified Mr. Dinan that he had accepted service on the Dinan Defendants' behalf. *Id*. ¶ 4. Mr. Dinan did not become aware that plaintiff had attempted to serve the Dinan Defendants with a summons or copy of the complaint until he found them under the *New Canaanite*'s office door on August 30, 2021. *Id*. ¶¶ 4-5.

## ARGUMENT

### I. THE COURT SHOULD DISMISS ALL CLAIMS AGAINST THE DINAN DEFENDANTS FOR FAILURE TO STATE A CLAIM

Plaintiff's claims against the Dinan Defendants are supported by nothing more than a handful of conclusory allegations that fail to allege the elements of the claims she purports to bring against them. Her complaint fails to plausibly state any claim upon which any relief can be granted against the Dinan Defendants and should be dismissed as against them.

**A. Plaintiff Must Plausibly Plead Entitlement to Relief**

To survive a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), a complaint must "contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim is plausible on its face only when "the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* Mere "consisten[cy] with 'a defendant's liability,'" or "a sheer possibility that a defendant has acted unlawfully," is not enough. *Id*. (quoting *Twombly*, 550 U.S. at 557).

A complaint consisting merely of "threadbare recitals of the elements of a cause of action, supported by mere conclusory statements" must thus be dismissed. *Iqbal*, 556 U.S. at 678. As this Court has recognized, a plaintiff must plead "more than an unadorned, the-defendant-unlawfully-harmed-me accusation," *id*., as "factual grounds must consist of more than 'labels and conclusions' or 'a formulaic recitation of the elements of a cause of action,'" *Heusser v. Hale*, 777 F. Supp. 2d 366, 374 (D. Conn. 2011) (quoting *Iqbal*, 556 U.S. at 678 (internal quotations in *Iqbal* omitted)). Plaintiff has failed to meet her pleading burden.

**B. The Complaint Fails to State a Claim for Defamation Against the Dinan Defendants**

The pleading standard articulated in *Iqbal* and *Twombly* applies fully in defamation actions such as this. *Biro v. Conde Nast*, 807 F.3d 541, 545 (2d Cir. 2015), cert. denied, 136 S. Ct. 2015 (2016). In fact, the *Iqbal/Twombly* standard "has a particular value in this context, as forcing defamation defendants to incur unnecessary costs can chill the exercise of constitutionally protected freedoms." *Biro v. Conde Nast*, 963 F. Supp. 2d 255, 279 (S.D.N.Y. 2013), aff'd 807 F.3d 541 (2d Cir. 2015) (quotation marks and citation omitted). "In other

words, in defamation cases, Rule 12(b)(6) not only protects against the costs of meritless litigation but provides assurance to those exercising their First Amendment rights that doing so will not needlessly become prohibitively expensive." *Id*. For the reasons explained below, the complaint fails to state claim for defamation.

**1. The defamation claims are time-barred.**

In Connecticut, defamation claims must be brought within "two years from the date of the act complained of." Conn. Gen. Stat. § 52597. Although plaintiff fails to identify any alleged defamatory statements or when they were purportedly made, the source of her claims is apparently a July 11, 2019 article in which the Dinan Defendants reported on the Parking Commission hearing described in the complaint.[2] Assuming the alleged defamatory statements at issue are contained in this article, plaintiff's defamation claims against the Dinan Defendants are time-barred.

Because plaintiff invokes this Court's supplemental jurisdiction over her claims against the Dinan Defendants, *see* Compl. ¶ 11, this Court must apply Connecticut law "for purposes of determining when an action is commenced," *Shlafer v. Wackenhut Corp*., 837 F. Supp. 2d 20, 24 (D. Conn. 2011). *See also Promisel v. First Am. Artificial Flowers, Inc*., 943 F.2d 251, 257 (2d Cir. 1991), cert. denied, 122 S. Ct. 939 (1992) ("In applying pendent jurisdiction, federal courts are bound to apply state substantive law to the state claim."); *Cantor Fitzgerald Inc. v. Lutnick*, 313 F.3d 704, 710 (2d Cir. 2002) ("A state's rules providing for the start and length of the statute of limitations is substantive law.").

[2] *See* Michael Dinan, *Ticketed Woman Accuses Parking Enforcement and Town of Racism, Threatens Lawsuit*, NEW CANAANITE (July 11, 2019), https://newcanaanite.com/ticketed-woman-accuses-parking-enforcement-and-town-of-racism-threatens-lawsuit-1416508.

Under Connecticut law, plaintiff was required to commence this action within two years of the date of publication. *See* Conn. Gen. Stat. § 52-597. The date of publication was July 11, 2019, so plaintiff was required to commence this action by July 11, 2021, but failed to do so.

In Connecticut, "an action is commenced for purposes of a statute of limitations on the date of service of the complaint upon the defendant." *Shlafer*, 837 F. Supp. 2d at 24. *See also Rana v. Ritacco*, 236 Conn. 330, 338 (1996) (underscoring that "an action is not 'commenced' until process is actually served upon the defendant") (quoting *Lacasse v. Burns*, 214 Conn. 464, 475 (1990)); *Kotec v. Japanese Educ. Inst. of N.Y.*, 321 F. Supp. 2d 428, 431 (D. Conn. 2004) (holding that plaintiff did not comply with statute of limitations because she did not serve defendant within 90-day limitations period). This rule applies in defamation actions like all others. *See, e.g.*, *Gianetti v. Conn. Newspapers Publ'g Co*., 136 Conn. App. 67, 73 (Conn. App. Ct. 2012), cert. denied, 307 Conn. 923 (2012) (affirming summary judgment against libel plaintiff for failing to serve process within statute of limitations). All apart from the insufficiency of service on the Dinan Defendants, *see* Section II, *infra,* plaintiff's affidavits of service aver that the defendants were not served until August 24, 2021, well beyond the limitations period. *See* Dkts. 27, 29. Indeed, summonses were not even requested and issued until August 12, 2021, after the statute of limitations for defamation had expired. *See* Dkt. 18. The defamation claim should plainly be dismissed as time-barred.

**2. Plaintiff fails to plead the elements of defamation.**

The defamation claim should also be dismissed for failure to state a viable claim. "[T]o establish a prima facie case of defamation, the plaintiff must demonstrate that: (1) the defendant published a defamatory statement; (2) the defamatory statement identified the plaintiff to a third person; (3) the defamatory statement was published to a third person; and (4) the plaintiff's

reputation suffered injury as a result of the statement." *Gleason v. Smolinski*, 319 Conn. 394, 430 (2015) (internal quotation marks omitted). Plaintiff does not allege any facts that plausibly establish essential elements of her claims.

*First*, plaintiff does not identify any allegedly false and defamatory statements. "A complaint is insufficient to withstand dismissal for failure to state a cause of action where ... the complaint set forth no facts of any kind indicating what defamatory statements, if any, were made, when they were made, or to whom they might have been made." *Gibson v. Metropolis of CT LLC*, No. 19-CV-00544, 2020 WL 956981, at *9 (D. Conn. Feb. 27, 2020) (internal quotation marks and citations omitted). *See also Forgione v. Bette*, No. CV044001099S, 2005 WL 1545278, at *5 (Conn. Super. Ct. June 2, 2005) (dismissing defamation claim where plaintiff identified report containing allegedly defamatory statements but not "which statements in the reports are alleged to be defamatory"); *U.S. ex rel. Smith v. Yale Univ.*, 415 F. Supp. 2d 58, 108-09 (D. Conn. 2006) ("[Plaintiff] must plead, in order to provide sufficient notice, what defamatory statements … were made concerning the plaintiff, when they were made, [and] to whom they might have been made.") (internal quotations omitted, second alteration in original). Here, the complaint alleges nothing more than that "Michael Dinan further published statements that were not made by Jafri in some instances and not made by Pia in other instances," Compl. ¶ 48, and that all media defendants published "defamatory statements" in unidentified "news articles and online," *id*. ¶¶ 80, 81. These allegations are insufficient to support a defamation claim.

*Second*, even had plaintiff identified statements made by the Dinan Defendants, the complaint alleges only in conclusory fashion that the statements at issue were "defamatory," but, apart from alleging that certain unspecified statements by her and Ms. Pia were "not made,"

Compl. ¶ 48, fails to identify in what respect they were false and fails to identify their defamatory meaning. Plaintiff woefully fails to meet her burdens to allege falsity and to explain how the false facts allegedly conveyed caused her reputation to be diminished. *See Ramirez v. Costco Wholesale Corp*., No. CV116020832, 2014 WL 2696737, at *4 (Conn. Super. Ct. May 9, 2014) (noting that injury to the reputation from false facts must be alleged and proved) (citing *Urban v. Hartford Gas Co*., 139 Conn. 301, 308 (1952)).

Having failed to both identify the statements in dispute and to allege plausibly that they were both false and defamatory, plaintiff has failed to allege essential elements of a defamation claim. The claim should be dismissed for this reason as well.

**3. Plaintiff is barred from recovery by the retraction statute.**

The claims against the Dinan Defendants should be dismissed for yet another independent and equally dispositive reason—the complaint fails to allege any recoverable damages. Under Connecticut law,

> In any action for a libel, the defendant may give proof of intention; and unless the plaintiff proves either malice in fact or that the defendant, after having been requested by the plaintiff in writing to retract the libelous charge, in as public a manner as that in which it was made, failed to do so within a reasonable time, the plaintiff shall recover nothing but such actual damage as the plaintiff may have specially alleged and proved. Conn. Gen. Stat. § 52-237.

"[A]ctual damages" under this provision refers to "actual pecuniary losses," and excludes "general harm to reputation, injured feelings or mental anguish." *Dellacamera v. New Haven Reg*., No. CV000436560, 2002 WL 31501855, at *3 (Conn. Super. Ct. Oct. 28, 2002).

Plaintiff has not alleged that she ever requested in writing the retraction of the allegedly defamatory statements, and thus may recover no more than actual pecuniary loss unless she pleads and proves "malice in fact." The complaint alleges neither malice in fact nor any actual damages from the allegedly defamatory statements.

*First*, the complaint contains no allegations plausibly establishing malice on the part of the Dinan Defendants in publishing their news report. "Malice in fact" requires an "improper or unjustifiable motive," *Dellacamera*, 2002 WL 31501855, at *4 (quoting *Bleich v. Ortiz*, 196 Conn. 498, 504 (1985)), which presupposes that the defendant "act[ed] with subjective knowledge that a statement was false or with reckless disregards or entire indifference to whether the statement was true or false," *id*. This standard is synonymous with the constitutional "actual malice" standard. *Id*. *See, e.g.*, *New York Times Co. v. Sullivan*, 376 U.S. 254, 279-80 (1964) (defining actual malice under the First Amendment). *See also Garrison v. Louisiana*, 379 U.S. 64, 74 (1964) ("false statements made with [a] high degree of awareness of their probable falsity"); *St. Amant v. Thompson*, 390 U.S. 727, 731, 732, (1968) (requirement "that the defendant in fact entertained serious doubts as to the truth of his publications"; "so inherently improbable that only a reckless man would have put them in circulation").

Here, plaintiff pleads no facts that, if proven, could plausibly establish that the Dinan Defendants knew anything they wrote was false or held serious doubt about their truth. The only reference to the Dinan Defendants' intent is the conclusory and "threadbare recital," *Iqbal*, 556 U.S. at 678, that "[d]efendants acted in reckless disregard as to the falsity of the publicized matter," Compl. ¶ 84. This is insufficient. Plaintiff's failure to allege any facts about the challenged statements makes it impossible to plausibly draw an inference of actual malice from the surrounding facts and circumstances. *See Biro*, 807 F.3d at 545 ("[W]hether actual malice can plausibly be inferred will depend on the facts and circumstances of each case.").

*Second,* having failed to allege either a request for retraction or malice in fact, plaintiff is limited to recovering only actual damages, *i.e.*, actual pecuniary loss. Conn. Gen. Stat. § 52-237; *Dellacamera*, 2002 WL 31501855, at *3. The complaint alleges no such loss. It alleges only

that plaintiff's "reputation suffered injury as a result of the statement," and requests punitive damages. Compl. ¶¶ 83, 86. The actual damages to which plaintiff's claim is limited does not include reputational injury, *see Dellacamera*, 2002 WL 31501855, at *3, and to recover punitive damages plaintiff is required to plead and prove actual malice. *Gambardella v. Apple Health Care, Inc*., 291 Conn. 620, 628 (2009). Again, the complaint contains no plausible allegation of actual malice, and thus fails to state an entitlement to any damages, even if the other multiple defects in the pleading of her defamation claim did not exist. *See Dellacamera*, 2002 WL 31501855, at *4.

**C. The Complaint Fails to State a Claim of False Light Invasion of Privacy Against the Dinan Defendants**

Plaintiff seeks recovery on a claim of "false light libel" against all the press defendants, including the Dinan Defendants. Compl. ¶¶ 74-78. While there is no tort of "false light libel" in Connecticut, plaintiff's complaint, liberally construed, presumably means to assert a claim for the tort of false light invasion of privacy.

Connecticut has adopted the rule of the Second Restatement of Torts that "a false light invasion of privacy occurs if '(a) the false light in which the other was placed would be highly offensive to a reasonable person, and (b) the actor had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the other would be placed.'" *Goodrich v. Waterbury Republican-Am., Inc.*, 188 Conn. 107, 131 (1982) (quoting 3 Restatement (Second), Torts § 652E (1977)). As with defamation, a statement cannot give rise to a false light claim if "substantially true." *Id*. at 132. Plaintiff has failed to allege either element of false light invasion of privacy, for essentially the reasons given above.

*First,* as already noted, the complaint fails to identify any false statement allegedly made by the Dinan Defendants. It advances the sweeping allegation that all press defendants

"portrayed Plaintiff in a false light that was highly offensive to a reasonable person, by falsely publishing statements and majorly misrepresenting Plaintiff's character." Compl. ¶ 75. Again, this entirely conclusory allegation is insufficient. The complaint contains nothing that plausibly could establish that any specific statement by the Dinan Defendants was both untrue and highly offensive to reasonable person. *See Miles v. City of Hartford*, 719 F. Supp. 2d 207, 217 (D. Conn. 2010), aff'd, 445 F. App'x 379 (2d Cir. 2011) (granting defendant summary judgment on false light claim because plaintiff failed to identify "what was said").

*Second,* the complaint fails to allege facts establishing that the Dinan Defendants published the challenged statements with "knowledge of" or "in reckless disregard" of the false light in which plaintiff would be placed, as Connecticut law requires. *Goodrich*, 188 Conn. at 131 (citation omitted). As with the defamation claims, the complaint simply makes the entirely conclusory allegation that all the media defendants "acted in reckless disregard as to the falsity of the publicized matter and the false light in which Plaintiff would be placed." Compl. ¶ 76. Again, such conclusory allegations are entirely insufficient. *See Kavanagh v. Zwilling*, 578 F. App'x 24, 24, 25 (2d Cir. 2014) (affirming dismissal of defamation claim because the court "do[es] not accept as true conclusions unsupported by the facts alleged, legal conclusions, bald assertions, or unwarranted inferences," and the complaint failed to plead facts that defendants "intended or endorsed" an inference).

**D. The Complaint Fails to State a Claim of Assault Against Mr. Dinan**

The complaint alleges that Mr. Dinan assaulted plaintiff by coming within some unspecified distance of he while he was photographing the Parking Commission hearing. Compl. ¶ 49. The allegations once again are entirely conclusory and insufficient.

Under Connecticut law, assault "is the intentional causing of imminent apprehension of harmful or offensive contact in another." *Dewitt v. John Hancock Mut. Life Ins. Co.*, 5 Conn.App. 590, 594 (Conn. App. Ct. 1985) (citing 1 Restatement (Second), Torts § 21 (1965)). Additionally, the imminent apprehension of contact must be objectively reasonable. *See Keeton v. Weiner*, No. CV136041584S, 2019 WL 6608756, at *13 (Conn. Super. Ct. Nov. 8, 2019) ("A person's behavior must create a fear of imminent harm from an objective standpoint.") (citation omitted); *Berry v. Montilla*, No. 3:16-cv-530 (AWT), 2018 WL 8729591, at *4 (D. Conn. Mar. 28, 2018) ("The apprehension 'must be one which would be normally aroused in the mind of a reasonable person.'") (quoting *Kindschi v. City of Meriden*, No. CV064022391, 2006 WL 3755299, at *5 (Conn. Super. Ct. Nov. 28, 2006)). And it must be caused by "an overt act evidencing some corporal threat." *Griffin v. O'Connell*, No. CV135034557S, 2015 WL 897277, at *10 (Conn. Super. Ct. Feb. 6, 2015) (citation omitted).

The complaint lacks any factual allegation that could support a "reasonable inference" either that Mr. Dinan intended to cause imminent apprehension or that any alleged apprehension was objectively reasonable. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The only factual allegations regarding the alleged assault are the following:

> While Jafri argued with town officials about their conspiracy to discriminate against non-Whites, Michael Dinan hovered over Jafri with a phone camera. Dinan is at least 6-feet tall and at the time was morbidly obese, with a highly intimidating stature. He approached Jafri within a few feet, sticking a phone in her face while Jafri asked him to cease and desist. Compl. ¶ 49.

*First*, the facts alleged do not support a reasonable inference that Mr. Dinan intended to cause an imminent apprehension of harmful or offensive contact. According to the complaint, Mr. Dinan was a "media participant" at the Parking Commission hearing who approached Ms. Jafri with a "phone camera … within a few feet." Compl. ¶¶ 48, 49. The complaint alleges

no facts that, if proven, would establish that Mr. Dinan intended anything other than to photograph the hearing. Mr. Dinan's alleged size and Ms. Jafri's request that he "cease and desist," even if accepted as true, do not plausibly demonstrate any imminent harm or establish any intent to cause an apprehension of offensive contact. While the complaint does allege that Mr. Dinan "intended to cause an imminent apprehension of harmful or offensive contact with Plaintiff," Compl. ¶ 70, this conclusory allegation is insufficient to carry plaintiff's burden. *See Biro v. Conde Nast*, 807 F.3d at 544-45 ("*Iqbal* makes clear that … Rule 8's plausibility standard applies to pleading intent.").

*Second*, the complaint's allegations fail to support an inference that any imminent apprehension of harmful or offensive contact plaintiff allegedly felt was objectively reasonable, or "normally aroused in the mind of a reasonable person." *Berry*, *supra* at *4. A reasonable person would not imminently apprehend harmful or offensive contact merely because someone approached them within a few feet with a cell phone. *See, e.g.*, *Wilk v. Abbott Terrace Health Ctr., Inc*., No. CV065001328S, 2007 WL 2482486, at *8 (Conn. Super. Ct. Aug. 15, 2007) (dismissing assault claim for lack of reasonable apprehension where plaintiff alleged that defendant "screamed at and berated her while lean[ing] above her in a threatening manner thereby trapping her in her chair and point[ing] his finger very close to her face") (internal quotations omitted, alterations in original). Nor does the complaint allege any corporal threat that could have caused such an apprehension. *See, e.g.*, *Griffin*, *supra* at *10 (finding no corporal threat where plaintiff alleged "that he was startled by the approach of [defendant], who was armed and in [police] uniform and was raging and screaming at him; that he feared [defendant] would physically harm him because of the latter's erratic, uncontrolled manner; and that [defendant] threatened that he could have him arrested").

* * * *

For each and all of these reasons, the claims against the Dinan Defendants should all be dismissed pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim.

## II. THE COURT SHOULD DISMISS ALL CLAIMS AGAINST THE DINAN DEFENDANTS FOR INSUFFICIENT SERVICE OF PROCESS

The complaint against the Dinan Defendants should also be dismissed pursuant to Fed. R. Civ. P. 12(b)(5) for insufficient service of process. Plaintiff bears the burden to demonstrate adequate service but cannot do so here. *See Dickerson v. Napolitano*, 604 F.3d 732, 752 (2d Cir. 2010). According to plaintiff's affidavits of service, process was served on an individual named "Graham" at the building that houses the *New Canaanite*'s offices. Dkts. 27; 29. But because no such person is employed by the *New Canaanite*, or appointed or authorized by law to receive service of process on its or Mr. Dinan's behalf, proper service has not occurred.

### A. Plaintiff Has Not Properly Served Mr. Dinan

Service of process on an individual may occur by personal service, Fed. R. Civ. P. 4(e)(2)(A), leaving process "at the individual's dwelling or usual place of abode with someone of suitable age and discretion who resides there," Fed. R. Civ. P. 4(e)(2)(B), delivery to "an agent authorized by appointment or by law to receive service of process," Fed. R. Civ. P. 4(e)(2)(C) or under state law. Fed. R. Civ. P. 4(e)(1). Connecticut law in turn provides that service on an individual is accomplished by "leaving a true and attested copy of it, including the declaration or complaint, with the defendant, or at his usual place of abode, in this state." Conn. Gen. Stat. §52-57(a). Service was purportedly made on Mr. Dinan by none of these methods.

According to plaintiff's affidavits of service, Mr. Dinan's summons and copy of the complaint were left with an individual named Graham at the *New Canaanite*'s office at 140 Elm Street in New Canaan. Dkts. 27, 29. No "Graham" is authorized or appointed to accept service

on Mr. Dinan's behalf. Dinan Decl. ¶ 6. He does not live at 140 Elm Street, or even in New Canaan, *id*. ¶ 3, and a person's workplace is not his "dwelling" or "abode" under either federal or Connecticut law, *see Cody v. Mello*, 59 F.3d 13, 14 (2d Cir. 1995) (noting that leaving a copy of summons and complaint at the police stations where defendants worked did not constitute abode service under Fed. R. Civ. P. 4(e)); *United States v. N. Tully Semel, Inc*., 88 F. Supp. 732, 732-33 (D. Conn. 1949) (holding that leaving summons at business office near defendant's apartment is insufficient for abode service under Connecticut law); *Plonski v. Halloran*, 420 A.2d 117, 118 (Conn. Super. Ct. 1980) (holding that "[t]he usual place of abode" is "the place where the person is living at the time of service") (citing *Grant v. Dalliber*, 11 Conn. 234, 238 (1836)). No proper service has been made on Mr. Dinan.

**B. Plaintiff Has Not Properly Served the *New Canaanite***

Service was similarly improper for *The New Canaanite*. Under Fed. R. Civ. P. 4(h), service on a corporate entity is made either as provided under the laws of the state of the district in which the corporation is being served or by delivering a copy to an "officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process and—if the agent is one authorized by statute and the statute so requires—by also mailing a copy of each to the defendant." Fed. R. Civ. P. 4(h)(1). The Connecticut rules for service of process for a corporation state:

> In actions against a private corporation, service of process shall be made either upon the president, the vice president, an assistant vice president, the secretary, the assistant secretary, the treasurer, the assistant treasurer, the cashier, the assistant cashier, the teller or the assistant teller or its general or managing agent or manager or upon any director resident in this state, or the person in charge of the business of the corporation or upon any person who is at the time of service in charge of the office of the corporation in the town in which its principal office or place of business is located. Conn. Gen. Stat. §52-57(c).

Process for the *New Canaanite* was purportedly served upon an individual named Graham at the building where it maintains an office. Dkts. 27, 29. Plaintiff has the burden to demonstrate that Graham was authorized to accept service on the *New Canaanite*'s behalf, but cannot bear that burden. *Rzayeva v. U.S.*, 492 F. Supp. 2d 60, 75 (D. Conn. 2007). No Graham is employed by the *New Canaanite*, Dinan Decl. ¶ 4, and "Graham" does not occupy any of the ranks of persons who can accept service under federal or Connecticut law. *Cf. Rzayeva*, 492 F. Supp. 2d at 75 (dismissing action for insufficient service of process because recipient was defendant's "Regional Director," a position not listed under either federal or Connecticut law as one capable of accepting service of process). Likewise, Graham was not appointed or authorized by law to accept service for the *New Canaanite*. Dinan Decl. ¶ 4. Plaintiff has failed to satisfy the requirements of Fed. R. Civ. P. 4(h), and her claims against the *New Canaanite* should also be dismissed for improper service of process.

## III. THE COURT SHOULD DISMISS THE COMPLAINT AND AWARD COSTS AND ATTORNEYS' FEES UNDER CONNECTICUT'S ANTI-SLAPP STATUTE

Connecticut's anti-SLAPP statute "protect[s] parties from meritless lawsuits designed to chill free speech, among other rights." *Pacheco Quevedo v. Hearst Corp*., No. FSTCV195021689S, 2019 WL 7900036, *1 (Conn. Super. Ct. Dec. 19, 2019). It does so by allowing defendants to file special motions to dismiss, which courts must grant if the defendant "makes an initial showing, by a preponderance of the evidence, that the opposing party's complaint … is based on the moving party's exercise of its right of free speech … unless the party that brought the complaint … sets forth with particularity the circumstances giving rise to the complaint … and demonstrates to the court that there is probable cause, considering all valid defenses, that the party will prevail on the merits of the complaint." Conn. Gen. Stat. § 52-196a(e)(3). If the movant prevails, he or she is also entitled to costs and attorneys' fees. *See*

Conn. Gen. Stat. § 52-196a(f)(1). Because plaintiff's claims against the Dinan Defendants are based upon the exercise of their free speech rights and plaintiff cannot demonstrate with particularity any circumstances that give rise to a meritorious claim, the court should dismiss the claims and award the Dinan Defendants their costs and attorneys fees pursuant to the Connecticut anti-SLAPP statute.

**A. Connecticut's Anti-SLAPP Statute Applies in Federal Court**

"Many courts," including the Second Circuit, have held that certain anti-SLAPP provisions apply federally. *Adelson v. Harris*, 774 F.3d 803, 809 (2d Cir. 2014). *See, e.g.*, *id*. (Nevada); *Godin v. Schencks*, 629 F.3d 79, 81 (1st Cir. 2010) (Maine); *Henry v. Lake Charles Am. Press, L.L.C.*, 566 F.3d 164, 168-69 (5th Cir. 2009) (Louisiana). These provisions apply in federal court where they "(1) would apply in state court had suit been filed there; (2) [are] substantive within the meaning of *Erie* [*v. Tompkins*, 304 U.S. 64 (1938)], … ; and (3) [do] not squarely conflict with a valid federal rule." *Adelson*, 774 F.3d at 809.

Connecticut's anti-SLAPP statute is on all fours with the Nevada law whose federal application the Second Circuit upheld in *Adelson*. Both require the defendant to make an initial showing by a preponderance of the evidence that the plaintiff's claim is based on protected speech activity. *See* Nev. Stat. 41.660(3)(a); Conn. Gen. Stat. § 52-196a(e)(3). If the moving party makes that showing, the plaintiff must then show her entitlement to relief. In Nevada, the plaintiff must demonstrate "with prima facie evidence a probability of prevailing on the claim," Nev. Stat. 41.660(3)(b), while in Connecticut she must establish "probable cause" that she will prevail on the merits, Conn. Gen. Stat. § 52-196a(e)(3).[3] Both statutes create a substantive right

[3] Under Connecticut's anti-SLAPP statute, probable cause exists if a person "of ordinary caution, prudence and judgment" is warranted in "entertaining [plaintiff's claim]." *Elder v. Kauffman*, 204 Conn. App. 818, 825 (Conn. App. Ct. 2021) (citation omitted). It is "not as demanding as proof by preponderance of the evidence." *Id.*

by allowing defendants to recover costs and attorneys' fees. *See* Nev. Stat. 41.670(1)(a); Conn. Gen. Stat. § 52-196a(f)(1). Under the reasoning of *Adelson,* Connecticut's anti-SLAPP statute plainly applies to Connecticut tort claims litigated in federal courts in Connecticut.

**B. Plaintiff's Claims Are Subject to Connecticut's Anti-SLAPP statute.**

It is also clear under *Adelson* that Connecticut's anti-SLAPP statute applies to plaintiff's claims against the Dinan Defendants and entitle them to an award of costs and reasonable attorneys' fees.

*First*, plaintiff's claims are clearly "based on [the Dinan Defendants'] exercise of [their] right of free speech." Conn. Gen. Stat. § 52-196a(e)(3). The statute defines the "right of free speech" as "communicating, or conduct furthering communication, in a public forum on a matter of public concern," Conn. Gen. Stat. § 52-196a(a)(2), and defines a "matter of public concern" to include an "issue related to … the government," Conn. Gen. Stat. § 52-196a(a)(1)(C). Photographing and reporting on a town Parking Commission hearing by the press plainly satisfy these threshold requirements.

*Second*, plaintiff has not and cannot demonstrate "probable cause" that she will prevail on the merits of her claims against the Dinan Defendants. As shown above, plaintiff has failed even to allege essential elements of each of her claims, her defamation claim is time-barred, and she failed to properly serve the Dinan Defendants. She cannot demonstrate probable cause that she will succeed on the merits, and the Dinan Defendants are therefore entitled to dismissal and to an award of their costs and reasonable attorneys' fees.

## CONCLUSION

For the reasons above, the Dinan Defendants respectfully request that the Court dismiss plaintiff's claims against them and award them their costs and reasonable attorneys' fees in an amount to be determined on a future motion.

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Respectfully submitted,

By: */s/David Schulz*

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[4] This memorandum was prepared by a clinic associated with Yale Law School but does not purport to present the school's institutional views, if any.