SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

WILLIAM COAKLEY,

Plaintiff,

-v-

HARVEY BERGER, CHRYSANTHI BERGER, and VIRTUOSO 2, INC.,

Defendants.

Index No. 154310/2022

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS THE COMPLAINT AND FOR RELATED RELIEF

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Defendants Harvey Berger ("Dr. Berger"), Chrysanthi Berger ("Mrs. Berger") and Virtuoso 2, Inc. ("Virtuoso") (together, "Defendants") respectfully submit this Memorandum of Law in support of their motion, pursuant to CPLR Rule 3211(a)(2), (7) and (10), and CPLR § 3001, to dismiss the Complaint, and, pursuant to Rule 216.1 of the Uniform Rules, for an order directing the refiling of the Complaint in a redacted form.

STATEMENT OF FACTS

A. Background Facts And The Nondisclosure Agreement At Issue

Plaintiff, William Coakley ("Plaintiff" or "Coakley"), co-wrote a script for a film, entitled Runt, a coming-of-age drama and love story concerning the lives and relationships of high school students and the related failures of adults. The film strongly expresses anti-bullying and anti-violence themes. H. Berger Aff. ¶ 1.

In 2018, Coakley "began working with film producer Carl Rumbaugh in hopes of producing a feature film based on Plaintiff's script." Complaint, NYSCEF 1 ¶ 19. Coakley and Rumbaugh "were [then] approached by" a representative of Defendants "to negotiate the financing and production of the Film." Id. ¶ 21.

On May 21, 2018, Defendant Virtuoso and Coakley, together with Coakley's corporation, Angry Baby Productions, Inc. ("Angry Baby"), entered into a contract, entitled "Confidentiality and Nondisclosure Agreement" (the "NDA"). NYSCEF 1 Ex. A. The contract facilitated "negotiat[ions for] the financing and production" of Runt. NYSCEF 1 ¶ 20.

In the contract, Coakley acknowledged that he "requires the disclosure [to Coakley] of certain information that [Virtuoso] deems confidential, including[,] without limitation[,] the identities of the ultimate principals of [Virtuoso] and financiers of [Runt.]" Coakley therefore agreed to receive "Confidential Information[,]" as defined in the NDA, to "use[]" Confidential

Information solely in connection with the discussions with [Virtuoso] concerning [Virtuoso's] funding and producing" of Runt, and "not to . . . disclose any Confidential information to any third party[.]" As the Complaint admits, confidentiality, "to protect the[] identities [of] the financiers" of Runt, was "a condition precedent to financing and producing" of Runt. NYSCEF 1 ¶ 4; see id. ¶ 96 (admitting that Plaintiff signed the NDA . . . as a condition precedent"); id. ¶ 104 (same).

B. The Production Of Runt And Related Developments

Coakley later became the Director of Runt. The cast, not surprisingly, included teenagers. Thus, Cameron Boyce, then aged 19, and a popular, well-known veteran of many Disney television and film productions, played the male lead. Id. ¶¶ 27, 29. Nicole Berger, then aged 14, and the daughter of Defendants Dr. and Mrs. Berger, played the female lead. H. Berger Aff. ¶ 5. In July 2018, filming began in California. NYSCEF 1 ¶ 5.

On July 6, 2019, Boyce died -- suddenly and shockingly -- at the age of 20, as the result of an uncommon complication of epilepsy. Runt proved to be his last film. H. Berger Aff. ¶ 6.

In February 2020, just before the pandemic stalled the film industry, not to mention the rest of the economy, Runt appeared at the Mammoth Film Festival, held annually in Mammoth Lakes, California. There, Coakley won the Best Director Award, and Runt itself won the Audience Award for Best Feature Film. Subsequently, the film was licensed for distribution in the United States to 1091 Pictures, Inc., a well-known film distribution company founded by Sony Entertainment. H. Berger Aff. ¶ 7.

C. Coakley Renounces His Own Award-Winning Film

Soon, however, Coakley began to manifest his Alice-Through-The-Looking-Glass thoughts and actions regarding Runt. Thus, in early 2021, Coakley sought to have his name and

that of his co-author removed from Runt's credits, describing his own award-winning film as "unfinished and unethical[.]" NYSCEF 1 ¶¶ 78, 80. H. Berger Aff. ¶ 8.

Coakley had no contractual right to remove those names. Virtuoso's successor nevertheless engaged in negotiations with Coakley, negotiations in which Dr. Berger participated. Coakley was offered the opportunity to view the final cut of the film, and then make a decision regarding the credits; he did not respond. Coakley was then informed that the names would not be removed from Runt's credits. H. Berger Aff. ¶ 9.

Coakley, in the course of those negotiations, also referred to what he called "multiple instances of bullying, harassment, sexual harassment and sexual misconduct" in the production of Runt. Dr. Berger encouraged Coakley to come forward with details of those allegations, such as the names of the allegedly harassed crew members, so that a law firm could, and would, investigate. Coakley, however, came forward with nothing. H. Berger Aff. ¶ 10.

During these negotiations, counsel for Virtuoso, on two occasions, emailed Coakley, recounting what counsel described as actions by Coakley in breach of his confidentiality obligations under the NDA. The second of those emails, dated May 19, 2021, stated: "[I]t is a breach of the signed and effective NDA for you to make unauthorized statements or disclosures about the Company, the film (RUNT) or the film's production activities. You are hereby reminded that the statements you have indicated you intend to release -- individually and/or through your new publicist -- are not authorized. Further if your statements contain any falsehoods, you and anyone acting on your behalf to publish the same, may be found liable for defamation." H. Berger Aff. ¶ 11; H. Berger Aff. Ex. 1.

Dr. Berger nevertheless continued the negotiations, seeking a settlement of all Runt-related disputes and offering Coakley another directorial or other creative opportunity. In

August 2021, however, those negotiations ended unsuccessfully. NYSCEF ¶¶ 83-84. Near the end of those negotiations, Coakley's demeanor and positions became increasingly threatening. H. Berger Aff. ¶ 12.

D. Coakley -- For Eight Months -- Cyber-Attacks The Berger Family

With negotiations ended, Coakley decided to seek revenge against the Bergers. H. Berger Aff. ¶ 13. Thus, Coakley had already described his plan, including death by suicide for the teenager Nicole, in gory and menacing detail:

> It will be subtle, and nobody is going to know it's happening until it's already done, but I'm going to extract [sic] my revenge and absolutely CRUCIFY their f[***]ing twat daughter Nicole during the rollout of this film. I've never targeted a young person, or a girl, before so this will be something to put extra effort into! With any luck I can get that little c[**]t to commit suicide herself... and then Harvey and Chrysanthi can write another dedication… in their own words.

Lovingly dedicated to the memory of _____ _____.

* * *

Dedicated to _____ we wish to emphasize dead.

I'm loving memory of our horrifically dead _____. [sic]

Dedicated to _____ _____ but only if you know and remember to ask why he's dead. . . .

Dedicated to the memory of _____ _____ we actually have no respect for (or his family and colleagues). . . .

Right?? I'm gonna email all these to Harvey, Chrysanthi AND Nicole thanking them for the "generosity" to acknowledge the man that originated the project. Get the ball rolling on putting the little bitch back on suicide watch herself.
😈

Rumbaugh Aff. Ex. 1.

Coakley continued, referring to the Bergers, "I'll kiss THAT ring when, like in the glorious days of a depraved Ancient Rome, we've seen their c[**]t daughter raped by dogs and buried alive 🙏[.]" Rumbaugh Aff. Ex. 2.

Coakley then trained his sights on Dr. Berger and his family. Specifically, Coakley sent repeated communications by text, WhatsApp, phone and email, to Dr. Berger, Mrs. Berger or to both of them, in which Coakley spun his tale, repeated in the Complaint here, of a "hostile work environment" on the Runt film-set and of a "coerced" on-screen kiss between Boyce and Nicole Berger. In fact, Runt's script, co-written by Coakley himself, called for this kiss, and both actors consented to play the scene. Nevertheless, in Coakley's fevered retelling, which relies on the hearsay declarations of Boyce, an unavailable declarant, the kiss now constituted "coercion" of Boyce, "sexual misconduct" and "coerced sexual misconduct[.]" H. Berger Aff. ¶ 14; Rumbaugh Aff. ¶ 5.

Coakley's characterization of the kiss and the kissing-scene, however, betrays still more of his Alice-Through-The-Looking-Glass mentality. Indeed, Boyce's own mother testifies: "The kiss can best be described as clean and wholesome." She continues: "I believe that no objective observer would regard the kiss or the scene as 'sexual,' much less as 'sexual misconduct' or 'coerced sexual misconduct.'" E. Boyce Aff. ¶ 4.

To characterize Coakley's communications with the Bergers as "repeated," moreover, is vastly to understate the matter. Over a six-week period in early 2022, for example, Coakley sent Dr. Berger no fewer than 109 such communications, often doing so in rapid-fire succession, just minutes apart. On March 3, 2022, for example, Coakley sent four communications between 12:16 and 12:39 p.m., another at 3:06 p.m., and nine more between 4:50 and 6:09 p.m. On

March 6, 2022, he sent another 13 communications over a period of seven hours and 25 minutes. On March 28, 2022, he sent nine messages in just 1 hour and 42 minutes; on March 30, five messages over eight minutes. H. Berger Aff. ¶ 15.

Coakley created, and sent to Dr. Berger, mock movie posters, which depicted Boyce and Nicole, and denigrated the Bergers and Runt with written, expose-style headlines, such as: "First Kiss. He Kept Saying No. Her Mom Didn't Care". H. Berger Aff. Ex. 2. Coakley taunted: "I could even throw them up onto IG [Instagram] and gauge public reaction for a few days[.]" H. Berger Aff. ¶ 16; H. Berger Aff. Ex. 3.

Coakley escalated: "I think I need to go high impact[.]" Coakley said he was writing a "tell-all script about the making of RUNT[.]" H. Berger Aff. Ex. 3. He threatened litigation against the Bergers ("civil attorneys prepping my legal actions against you") ("And once this gets filed and goes public, I won't even need to go further on the record . . . . Media will be all over this[]"). He continued to threaten the Bergers' teenage daughter: "Nicole will be subpoenaed as this advances." H. Berger Aff. Ex. 4. "That's all going to be enshrined in public legal filings[.]" He vowed: "Justice and accountability are coming[,]" concluding, as if all in a day's work, "OK gotta get back to work." H. Berger Aff. ¶ 17; H. Berger Aff. Ex. 5.

In September 2021, Runt premiered in Hollywood and opened in select theatres in major cities, followed by release on streaming and video-on-demand in October 2021. In conjunction with that opening, Coakley further escalated his attack, issuing what he called a "Director Statement[,]" which disclosed publicly, but without naming the Bergers, much of what Coakley had previously said, privately, to the Bergers. See H. Berger Aff. ¶ 18; NYSCEF 1 ¶ 88 (quoting Director Statement in full; stating that Runt was "unfinished, unethical[;]" describing "[o]ne of our investors [as] especially toxic[;]" characterizing "her" treatment of Boyce as "pervasive

bullying, harassment, sexual harassment (which targeted other crew members as well), and even an incident of coerced sexual misconduct"). Again, as shown in the Affidavits submitted in support of this motion, these alleged incidents did not occur.

Thereafter, not surprisingly, complete strangers to the Bergers, picking up on Coakley's Director's Statement, cyber-attacked the Bergers. They did so via social-media communications directed not only to the Bergers themselves but also to Dr. Berger's business and professional colleagues and -- even worse -- to Nicole Berger's real-life schoolmates and teachers, which forced the authorities at Nicole's high school to block such communications. H. Berger Aff. Exs. 6, 7. Still other strangers, following and referring to the Director's Statement, publicly identified the Bergers as the alleged malefactors. See H. Berger Aff. ¶ 19; H. Berger Aff. Ex. 8 (providing link to Director's Statement, repeating Coakley's allegations of misconduct and concluding that "people just need to know it was Crysanthi [sic] before working with that family again[]").

Coakley, still not satisfied, expanded his cyber-attack yet again. Thus, Coakley stated that he had "been speaking to" an "investigator and reporter[.]" The Bergers then received an email from a person claiming to be a "private investigator" "hired to investigate allegations of abusive and inappropriate on-set behavior during the production of 'Runt'. Many of these claims are being looked into by independent media outlets working with my [unnamed] client." The "private investigator" -- in all likelihood, Coakley himself, using a false identity -- then posed a series of questions, which, viewed in retrospect, mirror the allegations that Coakley now makes in the Complaint in this action. H. Berger Aff. ¶ 20; H. Berger Aff. Ex. 10.

E. In Response To Coakley's Cyber-Attacks, The Bergers Make No Threats

In response to all these attacks and all this provocation, Dr. and Mrs. Berger made no threats. Coakley, for his part, goaded Dr. Berger ("Come on, Harvey. You can't answer for yourself? Be a grown up and speak up. Call me."). H. Berger Aff. Ex. 11. Dr. Berger, however, did not respond, much less make, or have others make, fresh threats of litigation or other actions against Coakley. H. Berger Aff. ¶ 21.

F. Coakley Finds -- But Then Loses -- A Lawyer, And Files This Action Pro Se

On May 6, 2022, a New York lawyer sent Dr. Berger an email, which stated, in pertinent part: "I have been retained by . . . Coakley to represent him in filing a declaratory judgment action against you and your wife for your repeated threats . . . to sue my client for alleged violations of" the NDA. The letter invited pre-litigation discussions, threatening that litigation "will inevitably attract substantial media attention[.]" H. Berger Aff. ¶ 22; H. Berger Aff. Ex. 12.

On May 12 and 13, 2022, Defendants' counsel spoke several times with Coakley's lawyer. On Friday, May 13, 2022, however, that lawyer -- presumably having thought twice about this case -- informed Defendants' counsel that Coakley would file this action pro se, which Coakley then did. K. Caruso Aff. ¶¶ 2-3.

Coakley's pro se Complaint here betrays his disingenuous, not to say bad-faith, tactics. Thus, the Complaint barges ahead with public disclosure of the Confidential Information at issue here -- disclosure protected, of course, by a privilege against defamation. See N.Y. Jur. 2d Defamation § 142 (2022) (discussing privilege to make otherwise defamatory statements in a pleading). The Complaint thereafter seeks a judgment declaring that the NDA does not prohibit the disclosure, which, of course, the Complaint already made.

The Complaint is transparently a public-relations effort, using a court filing as a cover to avoid a claim for defamation. Coakley obviously believes in the old, cynical adage: "Seek forgiveness, not permission."

ARGUMENT
POINT I

PLAINTIFF LACKS STANDING AND THE COURT LACKS JURISDICTION

A plaintiff must have standing to sue. If the plaintiff lacks such standing, then the court lacks jurisdiction over the action. See, e.g., In re World Trade Ctr. Lower Manhattan Disaster Site Litig., 30 N.Y.3d 377 (2017) (holding that "standing . . . go[es] to the jurisdiction of the court") (internal quotation marks omitted).

The plaintiff bears the burden of "demonstrat[ing]" his or her standing. JPMorgan Chase Bank, Nat'l Ass'n v. Caliguri, 36 N.Y.3d 953, 954 (2020). To carry that burden, the plaintiff must demonstrate that he or she "has suffered an 'injury in fact[.]'" World Trade, 30 N.Y.3d at 384 (some internal quotation marks omitted). "The existence of an injury in fact -- an actual legal stake in the matter being adjudicated -- ensures that the party seeking review has some concrete interest in prosecuting the action which casts the dispute in a form traditionally capable of judicial resolution." Soc'y of Plastics Indus., Inc. v. Cnty. of Suffolk, 77 N.Y.2d 761, 772 (1991) (internal quotation marks omitted); see Mental Hygiene Legal Serv. v. Daniels, 33 N.Y.3d 44, 50 (2019) (similar holding).

"To this essential principle of standing," furthermore, "the courts have added rules of self-restraint, or prudential limitations[.]" Plastics, 77 N.Y.2d at 773. Those additional rules or limitations include "a general prohibition on one litigant raising the legal rights of another[.]"

Id.; see Mental Hygiene, 33 N.Y.3d at 50 (restating the "general prohibition of one litigant raising the legal rights of another") (internal quotation marks omitted).

Here, the Complaint fails to demonstrate that Coakley has standing to sue. On the contrary, the Complaint itself demonstrates that Coakley seeks to raise the rights of others. Thus, Coakley claims that Defendants committed "coerced sexual misconduct" against Boyce, not against Coakley, and that Defendants created a "hostile work environment" against some unidentified film-crew members, not against Coakley. See NYSCEF 1 ¶¶ 42-68.

Accordingly, Coakley has not suffered injury in fact, as required to give him the necessary "legal stake in the matter being adjudicated[.]" Plastics, 77 N.Y.2d at 772. In any event, Coakley runs afoul of an "added rule[] of self-restraint, or prudential limitation[,]" Id. at 773 -- the "general prohibition" against "raising the legal rights of another[.]" Id. The Court therefore lacks jurisdiction and should dismiss the Complaint.

POINT II

THE COURT SHOULD REFUSE TO RENDER A DECLARATORY JUDGMENT AND SHOULD DISMISS THE COMPLAINT

CPLR § 3001(a) provides, in pertinent part: "The supreme court may render a declaratory judgment . . . as to the rights and other legal relations of the parties to a justiciable controversy whether or not further relief is or could be claimed." Here, the Court should refuse to render a declaratory judgment (A) as matter of law, because this action presents no "justiciable controversy" within the meaning of section 3001(a), or (B) as a matter of discretion, for the reasons set forth in Point II.B below. The Court should then dismiss the Complaint.

A. As A Matter Of Law, This Action Presents No Justiciable Controversy

Section 3001(a) authorizes a court to render a declaratory judgment as to the rights and relations of parties to a "justiciable controversy[.]" See Thome v. Alexander & Louisa Calder Found., 70 A.D.3d 88, 99 (1st Dep't 2009) ("Declaratory judgments are a means to establish the respective legal rights of the parties to a justiciable controversy.").

The issue of justiciability presents a question of law, not a question of discretion. 5 Weinstein, Korn & Miller, New York Civil Practice ("Weinstein") ¶ 3001.03 (2022). Justiciability, furthermore, has "two component elements -- a 'legally protectible interest' in the plaintiff and a 'controversy' that has crystallized." Id.

Here, the Complaint establishes neither component of the justiciability requirement:

1. Plaintiff Has No Legally Protectible Interest

Plaintiff has no legally protectible interest, for the following two reasons:

a. Plaintiff Raises The Rights of Others

Justiciability, for purposes of a declaratory judgment, requires that the plaintiff demonstrate more than mere standing to sue. "Thus, a declaratory judgment requires a justiciable controversy, in which not only does the plaintiff have an interest sufficient to constitute standing to maintain the action but also that the controversy involve present, rather than hypothetical, contingent or remote, prejudice to plaintiffs[.]" Touro Coll. v. Novus Univ. Corp., 146 A.D.3d 679, 679-80 (1st Dep't 2017) (internal quotations omitted). And, again, "[t]o [the] essential principle of standing, the courts have added rules of self-restraint, or prudential limitations[,]" Plastics, 77 N.Y.2d at 773, which include the "general prohibition on one litigant raising the legal rights of another[.]" Id.

Here, the Complaint itself demonstrates that Coakley seeks to raise the rights of others. See Point I above. Indeed, he seeks to raise the rights of Boyce, who is deceased, even though

Boyce's mother testifies: "Mr. Coakley does not speak for Cameron. In fact, I don't think that Mr. Coakley has the right to speak for Cameron, and I hope that the Court will not let Mr. Coakley do that." E. Boyce Aff. ¶ 2.

Accordingly, even if Coakley has standing, he runs afoul of the "added rule[] of self-restraint, or prudential limitation[,]" Plastics, 77 N.Y.2d at 773 -- the "general prohibition" against "raising the legal rights of another[.]" Id. Coakley therefore has no legally protectible interest and the controversy is not justiciable.

b. The NDA Covers The Confidential Information At Issue And Is Enforceable

"[W]hen parties set down their agreement in a clear, complete document, their writing should . . . be enforced according to its terms[.]" Vermont Teddy Bear Co. v. 538 Madison Realty Co., 1 N.Y.3d 470, 475 (2004) (internal citation omitted). Here, Coakley does not dispute that the NDA is clear and complete. He does not dispute that he "accepted Defendants' proposed [contractual] conditions[,]" including the condition that Coakley maintain the confidentiality of Confidential Information, which "result[ed] in agreements being signed for the production of [Runt]." NYSCEF 1 ¶ 22; see id. ¶ 96 (admitting that Plaintiff signed the NDA . . . as a condition precedent to Defendants financing" of Runt). He does not dispute that the NDA covers the Confidential Information at issue. The NDA is therefore enforceable as written.

Coakley nevertheless contends that the Court should "relieve [him] of the consequences of [his] bargain[.]" 159 MP Corp. v. Redbridge Bedford, LLC, 33 N.Y.3d 353, 359 (2019). This contention, however, runs headlong into "the bedrock principle of freedom of contract[,] . . . a deeply rooted public policy of this state . . . and a right of constitutional dimension[.]" Id. at 359 (internal quotation marks omitted). "Our public policy in favor of freedom of contract[,]" moreover, "promotes certainty and predictability" in "business arrangements[,]" id. at 360, "a not

insignificant" consideration in New York, "the State that harbors the financial capital of the world[.]" Bluebird Partners, L.P. v. First Fid. Bank, N.A., 94 N.Y.2d 726, 739 (2000).

Accordingly, as a matter of law, Coakley can prevail here only if he can identify "a public policy strong enough to warrant a departure from the bedrock principle of freedom of contract." Redbridge, 33 N.Y.3d at 359. To that end, Coakley alleges that the NDA "is unconscionable." NYSCEF 1 ¶ 102. For the following reasons, however, that allegation fails as a matter of law.

The doctrine of unconscionability goes to issues of contract formation -- "the bargaining process[,]" Gillman v. Chase Manhattan Bank, N.A., 73 N.Y.2d 1, 10 (1988) -- which the Complaint here does not, and cannot, challenge. "A determination of unconscionability generally requires a showing that the contract was both procedurally and substantively unconscionable when made -- i.e., some showing of an absence of meaningful choice on the part of one of the parties together with contract terms which are unreasonably favorable to the other party[.]" Id. (internal quotation marks omitted). See King v. Fox, 7 N.Y.3d 181, 191 (2006) (similar holding).

Here, the Complaint fails to plead either element of the doctrine of unconscionability. As to the procedural element, the Complaint alleges nothing to show that Coakley lacked meaningful choice at the time the parties made the NDA. The Complaint alleges none of the circumstances that normally evidence unconscionability. See Gillman, 73 N.Y.2d at 11 (referring to high-pressure sales tactics, use of fine print, deception, and one party's inexperience or lack of education). Coakley, obviously, could have chosen to refuse to enter into the NDA; he chose instead to sign it.

Where, as here, a plaintiff fails to plead the first element of a two-part test, a court, obviously and logically, need not reach the second such element. In any event, the Complaint fails to satisfy the second element of the unconscionability doctrine: The Complaint alleges nothing to support a conclusion that the terms of the contract were "so outrageous[,]" Gillman, 73 N.Y.2d at 12, "that no promisor (absent delusion) would make" the agreement "and no honest and fair promisee would accept" the agreement. King, 7 N.Y.3d at 191.

On the contrary, the terms of the contract at issue show a classic, bargained-for exchange, which gave something of value to each side. Under the terms of the NDA, Coakley reaped ample benefits -- including the award-winning directorship of an award-winning film, Runt. Defendants too reaped contractual benefits -- including confidentiality. Coakley therefore does not, and cannot, allege facts that allow him now, on a theory of "unconscionability," to renounce his contractual duty of confidentiality. See NYSCEF ¶ 96 (admitting that Plaintiff signed the NDA . . . as a condition precedent to Defendants financing" of Runt).

Accordingly, Coakley must find, not to say conjure, some other public policy, one strong enough to outweigh "freedom of contract[, which] is itself a strong public policy interest." Redbridge, 33 N.Y.3d at 360. This, however, Coakley fails to do.

2. The Controversy Has Not Crystallized

"If the controversy [alleged in a complaint] is hypothetical . . . or academic, a justiciable controversy is absent." Weinstein ¶ 3001.05. "The courts do not make mere hypothetical adjudications, where there is presently no justiciable controversy before the court, and where the existence of a 'controversy' is dependent upon the happening of future events." Prashker v. U.S. Guarantee Co., 1 N.Y.2d 584, 592 (1956); see Peters v. Smolian, 154 A.D.3d 980, 983-84 (2d

Dep't 2017) (holding controversy "not justiciable[;]" controversy remained "hypothetical" where parties had yet to take certain steps).

Here, the controversy depends on "the happening of [two] future events." Prashker, 1 N.Y.2d at 592.

First, Defendants would have to make a fresh threat to sue Coakley for breach of the NDA. Here, however, even after Coakley's eight-months of cyber-attacks, Defendants have made no such threat. Second, Coakley would have to disclose (in a forum other than a privileged court-filing) the Confidential Information that he identifies in the Complaint. The Complaint, however, does not expressly aver that Coakley intends to make such disclosure.

Accordingly, the controversy here remains hypothetical, not justiciable. Neither of these prerequisites has occurred. Indeed, no one can predict whether either will ever occur.

B. The Court, In Its Discretion, Should Refuse To Render A Declaratory Judgment

Assuming the existence of a justiciable controversy, the Court, in its discretion, should nevertheless refuse to render a declaratory judgment in this case. A declaratory judgment is a discretionary remedy. James v. Alderton Dock Yards, 256 N.Y. 298, 305 (1931). "[A] court's decision whether or not to hear a declaratory judgment action . . . therefore depend[s] upon the facts of the particular case[.]" Weinstein ¶ 3001.09.

Nevertheless, "certain guidelines have been established. The cases in which the courts have refused to exercise their discretion to hear declaratory actions fall into fairly well[-]defined categories." Id. This case falls into three of those categories.

1. Plaintiff Has Failed To Join All Interested Parties

A court will refuse to render a declaratory judgment where, as here, the plaintiff has failed to join all interested parties. CPLR § 1001(a) provides, in pertinent part: "Persons who

ought to be parties if complete relief is to be accorded between the persons who are parties to the action . . . shall be made plaintiffs or defendants." CPLR § 3211(a)(10), in turn, authorizes dismissal of an action on the ground that "the court should not proceed in the absence of a person who should be a party."

These rules apply with full force in an action for a declaratory judgment. Thus, "[a] court may, and ordinarily must, refuse to render a declaratory judgment" unless "all persons who are interested in or might be affected by the enforcement of such 'rights' and 'legal relations[,]' and who might question in a court the existence and scope of such rights, are parties to the action[.]" Manhattan Storage and Warehouse Co. v. Movers and Warehousemen's Assoc. of Greater New York, Inc., 289 N.Y. 82, 88 (1942); see Ullman v. Medical Liab. Mut. Ins. Co., 159 A.D.3d 1498, 1500 (4th Dep't 2018) (holding that court "will not issue a declaration in favor of any party[,]" regarding validity of a contract, where some parties to the contract had not been joined in the action).

This requirement has an obvious rationale: An absentee would or may not be bound by the declaratory judgment and may later vex the defendant with another action. See Manhattan Storage, 289 N.Y at 88. "The controversy therefore would not be terminated by the [declaratory-judgment] action and there would be little reason for the court to grant declaratory relief, so that no useful purpose would be served by granting the declaration." Weinstein ¶ 3001.14.

Here, Coakley has failed to join an interested party as a plaintiff -- Angry Baby, a party to the NDA. See NYSCEF 1, Ex. A. The Court should therefore dismiss this action, or order Coakley to add that corporation as a party plaintiff. Defendants are entitled to a judgment that will bind all Coakley-aligned contracting parties.

2. The Effectiveness Of A Declaratory Judgment Would Remain Contingent

"The courts will not entertain a declaratory judgment action when [as here] any decree that the court might issue will become effective only upon the occurrence of a future event that may or may not come to pass." 5 Weinstein ¶ 3001.09b. Here, for brevity, Defendants incorporate by reference their argument, made in Point II.A.2 above, that the controversy has not crystallized. Even if that contention does not demonstrate the lack of justiciability, it nevertheless demonstrates contingencies that may or may not come to pass.

3. A Declaratory Judgment Would Not Terminate The Dispute

A court will refuse to render a declaratory judgment where, as here, such a judgment "would not terminate the dispute[.]" Weinstein ¶ 3001.09d; see Parry v. Cnty. of Onondaga, 25 Misc. 3d 1236(A), at *5 (Sup. Ct. Onondaga County 2009). "The primary purpose of declaratory judgments is to adjudicate the parties' rights before a 'wrong' actually occurs in the hope that that later litigation will be unnecessary[.]" Klostermann v. Cuomo, 61 N.Y.2d 525, 538 (1984) (emphasis added).

In this action, however, a declaratory judgment would not serve that purpose. On the contrary, as shown below, such a judgment would "increase the number of cases brought to determine similar issues, or result in piecemeal determination of the litigation." Weinstein ¶ 3001.09d.

Here, if the Court were to declare that the NDA does not prohibit Coakley from disclosing the Confidential Information at issue, and Coakley were then to disclose that Confidential Information (in a forum other than a privileged court-filing), Defendants would nevertheless retain their rights to sue Coakley in tort. Coakley's allegations of misconduct are false and defamatory, and knowingly so. Accordingly, if Coakley publicly discloses those allegations, then he would commit (among other torts) defamation and tortious interference with

prospective economic advantage -- torts for which Defendants would seek redress in future litigation against Coakley. See, e.g., AG Super Fund Int'l Partners, L.P. v. Winthrop Realty Tr., 149 A.D.3d 629 (1st Dep't 2017) (affirming denial of declaratory judgment where such "judgment would not quiet the parties' dispute"); cf. Thome, 70 A.D.3d at 100 (affirming denial of declaratory relief where, even if declaration could affect the plaintiff's rights, it would not impact defendant's rights).

The Court, accordingly, should leave the parties where it found them. "[T]he point and purpose of [declaratory] relief is to declare the respective legal rights of the parties based on a given set of facts, not to declare findings of fact." Thome, 70 A.D.3d at 100. Here, however, the merits of this dispute will require the Court to declare extensive findings of fact. As shown in Defendants' submissions in support of this motion, Coakley's allegations are false. Thus, for example:

Everyone on Runt's set knew, necessarily, that Nicole Berger was a minor. Indeed, that was precisely why a guardian, Mrs. Berger, accompanied Nicole on the set, as required by rules of the union involved, the Screen Actors Guild (known as SAG-AFTRA). C. Berger Aff. ¶ 1; Rumbaugh Aff. ¶ 2; E. Boyce Aff. ¶ 3.

Boyce was not "coerced" or "forced" into a kiss-scene with Nicole Berger. Everyone who read the script knew, necessarily and in advance of filming, that Coakley's own script called for a kiss between the two teenage actors, cast as high-school students. The scene was entirely appropriate to the plot and the themes of the film. Boyce expressly acknowledged his consent and willingness to perform the scene, which was performed and shot in a completely professional way. E. Boyce Aff. ¶ 4; Rumbaugh Aff. ¶ 4; C. Berger Aff. ¶ 5. In due course, Coakley and Runt itself won film-festival awards. C. Berger Aff. ¶ 2.

No objective viewer would regard the kiss or the scene as "sexual," much less as "sexual misconduct" or "coerced sexual misconduct." See E. Boyce Aff. ¶ 4 (describing kiss as "clean and wholesome[]"); Rumbaugh Aff. ¶ 5 (describing kiss as "innocuous, benign, important to the storyline in a film about a teenage love story"); C. Berger Aff. ¶ 5 (describing kiss as "sweet and innocent"). The Court can, and should, view the scene, and draw its own conclusion.

There was no "toxic work environment" on the set of Runt. Moving beyond the generalities of the Complaint, which identifies not a single crew-member "victim," the witnesses in support of this motion testify to a single incident, which involved an inappropriate comment by a crew member. The only "victim" of that comment was Nicole Berger, not Coakley, Boyce, or anyone else on the set. The incident came to the attention of the producer, who handled it appropriately. See Rumbaugh Aff. ¶ 3; C. Berger Aff. ¶ 3.

The only "toxic environment" in this case, moreover, was the one created by Coakley and his eight-month campaign of cyber-attacks against the Bergers. Coakley's behavior can only be described as obsessive, harassing and abusive. He went, in his own words, "high impact" against the Bergers. He crossed a line when he expressed and depicted thoughts of violence, death and suicide with respect to the teenage Nicole Berger. See Rumbaugh Aff. Exs. 1, 2. His conduct led perfect strangers to harass not only the Bergers, but Nicole's schoolmates and teachers. H. Berger Aff. ¶ 19; H. Berger Aff. Ex. 6, 7.

Coakley acts out of his admitted "anger, . . . intense and unrelenting," which is (in his mind) "righteous[.]" He acts, in fact, as a self-appointed, not to say self-important, spokesman and arbiter, crusading for "justice and accountability" on behalf of others -- Boyce, the unavailable declarant whose hearsay declarations permeate the Complaint, and unidentified Runt

crew members who have not come forward with complaints, despite ample time and opportunity to do so. H. Berger Aff. Ex. 5.

Coakley, in short, faces no "uncertainty beyond that faced by everyone who is a possible subject of a tort action. This is not the kind of uncertainty that the declaratory judgment action was created to end." Salomon Bros. v. W. Virginia State Bd. of Invs., 152 Misc. 2d 289, 295 (Sup. Ct. N.Y. County 1990).

Coakley, like anyone else in his position, can decide whether (or not) to disclose his allegations (in a forum other than a privileged court filing). If he does not make such disclosure, then no dispute will arise. If he does make such disclosure, then both sides can assert their rights in an ordinary coercive action, which is "better suited to the determination of the particular dispute[]" at issue here. 5 Weinstein ¶ 3001.10. Many cases hold a declaratory judgment "unnecessary where a full and adequate remedy is already provided by another well-known form of action. . . . Where there is no necessity for resorting to the declaratory judgment it should not be employed." James, 256 N.Y. at 305; see, e.g., Lawler v. Clinton St. Dev. Properties, Inc., 63 A.D.2d 827, 827-28 (4th Dep't 1978) (no need for declaratory relief where plaintiff made "no showing . . . that plaintiff's contractual rights, if any, could not be fully adjudicated in action at law").

Specifically, the Bergers can sue Coakley (for breach of the NDA and in tort); Coakley can defend, interposing the supposed unenforceability of the NDA as one of his defenses in the Bergers' action, "which, as thus constituted, will . . . dispose of all the questions involved in both[]" actions. Ithaca Textiles, Inc. v. Waverly Lingerie Sales Co., 24 A.D.2d 133, 134 (3d Dep't 1965); see Montoya v. Cousins Chanos Casino, LLC, 34 Misc. 3d 1211(A) (Sup. Ct. N.Y. County 2012) (holding declaratory judgment "unnecessary because plaintiffs can raise the issue

of their compliance as a defense in any action defendants may interpose"); Salomon Bros., 152 Misc. 2d at 292-93 (denying declaratory relief where the plaintiffs can present all of their "defenses and counterclaims" in a "normal damages action[,]" which "is the appropriate forum for the resolution of this controversy[]").

The court in that future action would be in a superior position -- able to decide all the issues in the controversy. This Court is this action, by contrast, has no justiciable controversy before it, and a declaratory judgment will leave open, for future litigation, more than it resolves.

POINT III

THE COURT SHOULD
ORDER PLAINTIFF TO
FILE A REDACTED COMPLAINT

New York law "has always favored public disclosure of court records." Matter of Twentieth Century Fox Film Corp., 190 A.D.2d 483, 485 (1st Dep't 1993). Such disclosure, however, has its limitations. Thus, under Rule 216.1 of the Uniform Rules, a court may seal, or require the redaction of, a court record, "upon a written finding of good cause, which shall specify the grounds thereof. In determining whether good cause has been shown, the court shall consider the interests of the public as well as the parties."

The concept of "good cause . . . boils down to . . . prudent exercise of the court's discretion[.]" Mancheski v. Gabelli Grp. Cap. Partners, 39 A.D.3d 499, 502 (2d Dep't 2007). Courts, furthermore, have exercised their discretion so as to maintain the confidentiality of materials that parties have previously agreed to keep confidential. See, e.g., O'Reilly v. Klar, 167 A.D.3d 919, 920 (2d Dep't 2018) (affirming order sealing court filings that were already confidential pursuant to confidentiality agreement or sealed in another action); People ex rel. Cuomo v. Merkin, 26 Misc. 3d 1237(A) n.1 (Sup. Court N.Y. County 2010) (parties, at oral

argument, submitted documents that were "subject to a confidentiality stipulation between the parties[;]" court therefore "returned" the documents to defendants and "directed" defendants "to file redacted copies . . . for the court file[]").

Here, the Court should find "good cause" to order Plaintiff to refile the Complaint in a form that redacts Confidential Information. As demonstrated above, Plaintiff agreed, in exchange for ample consideration, to maintain the confidentiality of Confidential Information. New York law makes that agreement presumptively enforceable. See Vermont Teddy Bear, 1 N.Y.3d at 475 ("when parties set down their agreement in a clear, complete document, their writing should . . . be enforced according to its terms").

Plaintiff, therefore, acting properly and in good faith, should have filed a Complaint that redacted alleged Confidential Information, pending a declaratory judgment authorizing public disclosure. Instead, Plaintiff cynically engaged in self-help: He disclosed the Confidential Information at issue, and then sought, retroactively, a judgment authorizing the disclosure he has already made -- disclosure protected, thus far, by a privilege against defamation. See N.Y. Jur. 2d Defamation § 142 (2022) (discussing privilege to make otherwise defamatory statements in a pleading).

The Court should not condone these tactics, which unilaterally give libel-proof relief to Coakley while depriving Defendants of their presumptively-enforceable contractual right to confidentiality. Rather, the Court, in its discretion, and for good cause, should restore the status quo ante, by ordering Plaintiff to refile the Complaint, in a form that redacts Confidential Information, pending further proceedings on appeal or in this Court. Both the private interests at stake and the public interest strongly warrant such relief. See Redbridge, 33 N.Y.3d at 360 ("freedom of contract is itself a strong public policy interest[]"); Twentieth Century, 190 A.D.2d

at 486-87 (sealing records relating to child actor); cf. O'Reilly, 167 A.D.2d at 920 (noting interest in maintaining confidentiality of matters impacting custody and welfare of minor children).

CONCLUSION

For the foregoing reasons, the Court should grant Defendants' motion.

Dated: North Haven, New York
June 8, 2022

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WORD COUNT CERTIFICATION

Kenneth A. Caruso, an attorney admitted to practice before the New York State Courts, certifies, in accordance with and pursuant to Section 208.8-b of the Uniform Civil Rules For The Supreme Court, that the foregoing Memorandum in Support of the Defendants' Motion to Dismiss dated June 8, 2022, contains 6616 words, exclusive of the caption, table of contents, table of authorities, and signature block; and the certification as to the foregoing relies upon the word count feature of the word-processing system used to prepare the document, Microsoft Word.

Dated: North Haven, New York
June 8, 2022

/s/ Kenneth A. Caruso
Kenneth A. Caruso