Felix v Six Ave. Cosmetics, LLC
2019 NY Slip Op 31704(U)
June 13, 2019
Supreme Court, New York County
Docket Number: 154594/2018
Judge: Margaret A. Chan
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. MARGARET A. CHAN** **PART** **IAS MOTION 33EFM**

Justice

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INDEX NO. 154594/2018

EMMA FELIX,

MOTION DATE _____

Plaintiff,

MOTION SEQ. NO. 001

- v -

SIX AVENUE COSMETICS, LLC, EPIDERMIS AT BRYANT PARK, INC., ANGELICA DOE, SAM DOE, EPIDERMIS LLC

DECISION AND ORDER

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24

were read on this motion to/for DISMISS.

In this fraud matter regarding a beauty product exceeding $50,000.00, defendants Six Avenue Cosmetics, LLC, Epidermis at Bryant Park, Inc., and Epidermis LLC move in motion sequence 001 to dismiss (1) plaintiff's complaint; (2) Epidermis LLC, Epidermis at Bryant Park, Inc., and Epidermis as defendants as they are improper parties to this action; and (3) to award defendants the costs of this motion. Plaintiff opposes the motion. The Decision and Order is as follows:

ALLEGATIONS

Plaintiff alleges that on March 16, 2017 she "was lured" into Epidermis, defendants' salon located at 743 Avenue of the Americas in the city, county, and state of New York (NYSCEF #2 – Verified Complaint at ¶4, 6). At this first of several visits, plaintiff purchased a skin care package for $9,802.03 which included a skin care machine, the "Perfectio Gold"[1] for $2,809.00 (1st Perfectio), a package of 12 monthly massages, including a "Diamond Mask" for $3,053.00, and a "Thermal Power Mask" for $1,245.00 and several other products (*id.* at ¶6).

Plaintiff claims that during one of her monthly facials, defendants suggested that they had a new "Perfectio" model that they wished to introduce to her (*id.* at ¶7). Later that week, plaintiff was called by defendants, inviting her to come in for a "Special Mother's Day Facial" (*id.*).

[1] The "Perfectio" makers claim it is a device that "will rejuvenate…skin appearance and structure, using dual action techniques – red LED light and topical heating care" (Zero Gravity Skin, http://www.zerogravity.com [last accessed Jun. 3, 2019]).

On May 18, 2017, plaintiff came in for her "special" facial (*id.* at ¶8). Plaintiff claims that "[a]s soon as she walked in [d]efendants began hawking another Perfectio, a Swarovski encrusted [model]" (the 2nd Perfectio) (*id.*). Plaintiff claims that defendants represented that the 2nd Perfectio customarily sold for $100,000.00, but for her, "a loyal and loved customer", they offered it for $50,000.00 (*id.* at ¶9). Plaintiff further states that defendants convinced her that it was one of only ten such units in the United States, that it provided better "penetration and skin correction" than the 1st Perfectio, and she needed to purchase it immediately or lose the opportunity (*id.*). Plaintiff claims that defendants "fawned" over her, telling her how much the 1st Perfectio had achieved and how much more miraculous her results would be with the 2nd Perfectio (*id.* at ¶10).

Plaintiff claims that following the facial massage, but while plaintiff remained on the massage table, two employees, defendants Angelica Doe and Sam Doe, acting in concert, aggressively coerced plaintiff to purchase the 2nd Perfectio (*id.* at ¶11). In attempting to coerce plaintiff to purchase the 2nd Perfectio, defendants Angelica Doe and Sam Doe allegedly made "numerous false representations" to plaintiff (*id.* at ¶12). Plaintiff claims that she resisted the coercions by Angelica Doe and Sam Doe to purchase the 2nd Perfectio, but their efforts "became increasingly aggressive and abusive, to the point that they deterred her from leaving the salon" and caused plaintiff, 65 years of age at the time of incident, "to become intimidated, in fear for her safety and feel severe emotional distress" (*id.* at ¶13).

Plaintiff claims that she, "in distress and fear, yielded to the coercive conduct employed by defendants" (*id.* at ¶14). Plaintiff claims she was then driven by the Doe defendants to an Apple Bank branch at 80th Street and Lexington Avenue where she withdrew from her account and delivered to the defendants a money order in the amount of $50,444.00 payable to Six Avenue Cosmetics, LLC (*id.*). Plaintiff was also charged $4,000.00 to her credit card, which was represented to her as being "for taxes" (*id.*).

Plaintiff claims that she attempted to obtain a refund and return the unused device in its original packaging on May 22, 2017, three business days after she made the purchase (*id.* at ¶15). However, defendants refused to accept the 2nd Perfectio and did not return her money (*id.* at ¶17).

Plaintiff therefore initiated this instant suit against defendants on May 16, 2018 (NYSCEF #1 – Summons). Plaintiff alleges eight causes of action: (1) fraud and misrepresentation; (2) assault and/or forcible taking; (3) that defendants engaged in "extreme and outrageous conduct" by getting plaintiff "to spend substantially all of her life savings for a product that was functionally identical to the 1st Perfectio for almost twenty time the cost and that defendants should have known she would suffer severe emotional distress upon realizing" what had

occurred; (4) violation of the Federal Trade Commission's (FTC) "Cooling-Off Rule"; (5) violation of New York General Business Law (GBL) § 218-a "Disclosure of Refund Policies"; (6) failure to maintain a beauty salon license as required by 19 NYCRR 160.3; (7) breach of contract due to defendants' conduct, which prevented plaintiff from returning to Epidermis for the facials and masks that she had previously purchased; and (8) intentional infliction of distress (NYSCEF #2 at ¶¶18-52). Defendants now move to dismiss the complaint.

STANDARD ON MOTION TO DISMISS

Defendants move pursuant to CPLR 3211(a) to dismiss all of plaintiff's claims. In deciding a motion to dismiss pursuant to CPLR 3211(a), the court must liberally construe the pleading, accept the alleged facts as true, and accord the non-moving party the benefit of every possible favorable inference (*see Leon v Martinez*, 84 NY2d 83, 87 [1994]; *Goldman v Metropolitan Life Ins. Co.*, 5 NY3d 561, 570 [2005]). "The court must determine only whether the facts as alleged fit within any cognizable legal theory" (*Leon*, 84 NY2d at 88). However, the court need not accept "conclusory allegations of fact or law not supported by allegations of specific fact" or those that are contradicted by documentary evidence (*Wilson v Tully*, 43 AD2d 229, 234 [1st Dept 1998]).

DISCUSSION

Fraudulent Inducement Claim (First Cause of Action)

The branch of defendants' motion to dismiss plaintiff's first cause of action for fraudulent inducement is denied. "The elements of a cause of action for fraud require a material misrepresentation of a fact, knowledge of its falsity, an intent to induce reliance, justifiable reliance by the plaintiff and damages" (*Eurycleia Partners, LP v Seward & Kissel, LLP*, 12 NY3d 553, 559 [2009]). Claims for fraud must meet the heightened pleading standard of CPLR 3016(b) (*see id.*). CPLR 3016(b) states that "[w]here a cause of action... is based upon misrepresentation, fraud, mistake, willful default, breach of trust or undue influence, the circumstances constituting the wrong shall be stated in detail." The "purpose underlying [CPLR 3016(b)] is to inform a defendant of the complained-of incidents" (*Eurycleia*, 12 NY3d at 559). To plead with sufficient particularity to satisfy CPLR 3016(b), "the complaint must 'allege the basic facts to establish the elements of the cause of action'" (*id.* [citations omitted]). "CPLR 3016(b) is satisfied when the facts suffice to permit a 'reasonable inference' of the alleged misconduct" (*id.*). And, "in certain cases, less than plainly observable facts may be supplemented by the circumstances surrounding the alleged fraud" (*id.*). Plaintiff must also allege the time and place of the purported misrepresentations and which employee(s) made the statement (*see Eastman Kodak v Roopak Enterprises, Ltd.*, 202 AD2d 220, 222 [1st Dept 1994]).

Defendants' argument is that "[p]laintiff's complaint fails to identify who exactly made the alleged false representations to her" and that "[p]laintiff fails to articulate how the alleged misrepresentations amounted to fraud" (NYSCEF #9 – Def's Memo of Law at ¶26).

Viewed most favorably for the non-movant, plaintiff's verified complaint makes out a valid claim for fraud, and it is pled with the requisite specificity. Plaintiff alleged that defendants and their authorized employees/agents made knowingly false representations of material fact regarding: (1) that the sale price for the 2nd Perfectio was $100,000.00; (2) that only 10 examples of the 2nd Perfectio existed in the United States; and (3) that the 2nd Perfectio's effectiveness exceeded that of the 1st Perfectio she had purchased, even though they were in fact the same devices, albeit a bedazzled version (NYSCEF #2 at ¶¶19-23). Plaintiff claims that the customary price of the 2nd Perfectio was far less than the $100,000.00 represented by defendants and that the specifications for the two Perfectios were identical and thus, the 2nd Perfectio could not have been of the superior quality claimed by defendants or worth substantially more (*id.*). Plaintiff alleged that she relied on defendants' representations and that she was damaged by having purchased a product having far less value than the $54,000 she paid (*id.*).

Contrary to defendants' assertion, plaintiff also clearly indicated the time, place, and identities of the individuals making the false representation. The representations were made on May 18, 2017 at the Epidermis store by defendants Angelica and Sam Doe, employees or agents of the corporate defendants (NYSCEF #2 at ¶12). The actual identities of the Doe defendants are known by the corporate defendants and thus their identities are readily ascertainable via discovery. As such, plaintiff has pled with enough specificity to survive the motion to dismiss. Defendants' first branch of their motion is denied.

Assault and Forcible Taking Claim (Second Cause of Action)

The branch of defendants' motion to dismiss plaintiff's assault claim is granted. Civil assault is the intentional placing of another person in fear of an imminent battery (*see Charkhy v Altman*, 252 AD2d 413, 414 [1st Dept 1998]). "To sustain a claim for assault there must be proof of physical conduct placing plaintiff in imminent apprehension of harmful contact" (*Holtz v Wildenstein & Co., Inc.*, 261 AD2d 336 [1st Dept 1999]).

None of plaintiff's allegations rise to the level of an assault. Plaintiff specifically alleges that she "resisted the coercions by Angelica Doe and Sam Doe to purchase the [2nd] Perfectio, but their efforts became increasingly aggressive and abusive, to the point that they deterred her from leaving the salon and caused plaintiff, 65 years of age, to become intimidated, in fear for her safety and feel

severe emotional distress" and that plaintiff "in distress and fear, yielded to the coercive conduct employed by" the Doe defendants (NYSCEF #2 at ¶¶13-14).

The conduct alleged, while perhaps anxiety inducing, "is not the type of menacing conduct that may give rise to a reasonable apprehension of imminent harmful conduct" necessary for an actionable assault claim (*Okoli v Paul Hastings, LLP*, 117 AD3d 539, 540 [1st Dept 2014]). Plaintiff does not allege any physical conduct by defendants that gives rise to an apprehension of imminent harmful conduct. Nowhere in plaintiff's complaint does she allege any physical conduct that would put her in fear of an imminent battery. Thus, plaintiff's claims that she felt "intimidated" and "in fear for her safety" do not rise to the level of an assault. Defendants' motion is granted as to the assault claim and it is dismissed.[2]

Intentional Infliction of Emotional Distress Claims (Third and Eighth Causes of Action)

The branch of defendants' motion to dismiss plaintiff's two claims for intentional infliction of emotional distress is granted. The tort of intentional infliction of emotional distress consists of four elements: "(i) extreme and outrageous conduct; (ii) intent to cause, or disregard of a substantial probability of causing, severe emotional distress; (iii) a causal connection between the conduct and injury; and (iv) severe emotional distress" (*Cohn-Frankel v United Synagogue of Conservative Judaism*, 246 AD2d 332, 332 [1st Dept 1998]). The conduct must be so extreme and outrageous "as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community" (*Murphy v Am. Home Products Corp.*, 58 NY2d 293, 303 [1983]). The outrageousness element is "most susceptible to determination as a matter of law" (*Howell*, 81 NY2d at 121). Indeed, the four "requirements of the rule are rigorous, and difficult to satisfy" and "of the intentional infliction of emotional distress claims considered by [the Court of Appeals], every one has failed because the conduct alleged was not sufficiently outrageous" (*Howell v New York Post Co., Inc.*, 81 NY2d 115, 122 [1993] [citing Prosser and Keeton, Torts §12, at 60-61 (5th ed)]).

Plaintiff's third and eighth causes of action are virtually identical. Plaintiff's third cause of action claims that "[d]efendants engaged in extreme and outrageous conduct in constraining Plaintiff to spend substantially all of her life savings for a product that was functionally identical to the 1st Perfectio for almost twenty times the cost" and plaintiff's eighth cause of action claims that "[d]efendants conduct vis-à-vis plaintiff was extreme and outrageous" and "it was intended to cause or

[2] The court notes that plaintiff's counsel contends in opposition papers that Felix was "partially dressed" in an attempt to bolster the assault claim. However, plaintiff did not aver to this in the verified complaint and plaintiff herself did not state as such in an affidavit in opposition to the motion to dismiss. As such, the court will not look to this additional detail, and, in any event, it does not alter this court's analysis of the assault claim

continued in blatant disregard of a substantial probability of causing severe emotional distress".

However, even when viewed most favorably for plaintiff, the alleged high-pressure sell-job that Epidermis instigated to coerce plaintiff into purchasing the $50,000.00 Perfectio does not constitute extreme and outrageous conduct. Defendants' alleged conduct, while certainly aggressive and unsavory, does not "go beyond all possible bounds of decency" (*Murphy*, 58 NY2d at 303). Indeed, plaintiff's "cause of action fails because plaintiff alleges only one instance of allegedly aggravating conduct, instead of the series of acts necessary to establish a viable action" (*Roberts v Pollack*, 92 AD2d 440, 448 [1st Dept 1983]). Conduct involving threatening behavior, such as the type alleged here, is not enough to survive a motion to dismiss (*see Seltzer v Bayer*, 272 AD2d 263, 265 [1st Dept 2000] ["plaintiff's claims that defendant dumped a pile of cement on the sidewalk in front of his house, tossed lighted cigarettes into his backyard, threw eggs on his front steps, and threatened once to paint a swastika on his house" were insufficient to support an IIED claim]; *Herlihy v Metropolitan Museum of Art*, 214 AD2d 250, 263 [1st Dept 1995] [allegations of sexual harassment, use of racial epithets, and discrimination is not so outrageous and extreme absent a deliberate and malicious campaign of harassment or intimidation]; *Owen v Leventritt*, 174 AD2d 471, 472 [1st Dept 1991] ["mere threats, annoyance or other petty oppressions, no matter how upsetting, are insufficient to constitute the tort of intentional infliction of emotional distress"]; *Trujillo v Transperfect Global, Inc.*, 2017 WL 748831 at *7 [Sup Ct, NY County 2017] ["subjecting an employee to unwanted sexual advances, physical contact and verbal harassment does not give rise to a cause of action for intentional infliction of emotional distress"]; *Jencsik v Shanley*, 2013 WL 6814445 at *2-5 [Sup Ct, NY County 2013] [allegations regarding threatening behavior and extreme sexual conduct against plaintiff's will leading to paranoia and PTSD not sufficient to sustain an intentional infliction of emotional distress claim]). As such, this branch of defendants' motion is granted.

FTC "Cooling-Off Rule" Claim (Fourth Cause of Action)

The branch of defendants' motion to dismiss plaintiff's fourth cause of action is granted. Plaintiff alleges that defendants violated 16 Code of Federal Regulations (CFR) 429.1(a), also known as the FTC's "Cooling-Off Rule". The Cooling-Off Rule provides that in connection with any door-to-door sale, it constitutes an unfair and deceptive act or practice for any seller to fail to furnish the buyer with a fully completed copy of the contract (16 CFR 429.1[a]). The rule further provides that the contract must contain the following statement: "You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right" (*id.*).

Plaintiff's claim fails for two reasons. First, the Federal Trade Commission Act, which undergirds the Cooling-Off Rule, provides no private right of action and thus this court has no jurisdiction to enforce the Rule (*see Alfred Dunhill, Ltd. v Interstate Cigar Co.*, 499 F2d 232, 237 [2d Cir 1974] ["the provisions of the Federal Trade Commission Act may be enforced only by the Federal Trade Commission"]; *Howard v Burleson Services, Inc.*, 2017 WL 1862212, at *2 [MD Fla, May 8, 2017] ["because there is no private right of action under the Federal Trade Commission Act, it follows that there is no private right of action to enforce the FTC's promulgated 16 CFR § 429.1"]). Second, even if this court did have jurisdiction, the sale occurred in a store and not in a door-to-door transaction, thus, plaintiff is not within the ambit of the rule. As such, plaintiff's fourth cause of action must be dismissed.

New York GBL §218-a "Disclosure of Refund Policies" Claim (Fifth Cause of Action)

The branch of defendants' motion to dismiss plaintiff's fifth cause of action alleging that defendants failed to post required refund policy disclosures in their shop is denied. Plaintiff's complaint merely alleges that "New York State Law requires a retailer to clearly and visibly post their refund policies, with which defendants failed to comply", however it is clear that plaintiff is referring to NY GBL §218-a. The statute, entitled "Disclosure of refund policies" reads, in pertinent part:

> 1. Every retail mercantile establishment shall conspicuously post, in the following manner, its refund policy as to all goods, wares or merchandise offered to the public for sale: (a) on a sign attached to the item itself; or (b) on a sign affixed to each cash register or point of sale; or (c) on a sign so situated as to be clearly visible to the buyer from the cash register; or (d) on a sign posted at each store entrance used by the public. (GBL §218-a).

Additionally, GBL §218-a includes an enforcement clause which states:

> 3. Enforcement. Any retail mercantile establishment which violates any provision of this section shall be liable, for a period of up to thirty days from the date of purchase, to the buyer for a cash refund or a credit, at the buyer's option, provided that the merchandise has not been used or damaged by the buyer and the buyer can verify the date of the purchase with a receipt or any other purchase verification method utilized by the retail merchant. (*id.*).

Defendants move pursuant to CPLR 3211(a)(1) and (a)(7) on this claim. Defendants included a document purporting to be a refund policy sign, however, it is completely illegible, and the court cannot determine what it states (NYSCEF #13

– Photograph of Refund Policy). Furthermore, Epidermis co-owner Ohad Sinvani's affidavit does not identify where exactly in the shop the sign was located and defendants do not include any photographs that would enable this court to make such a determination. As such, defendants have failed to demonstrate entitlement to dismissal of the NY GBL §218-a claim. The court adds that while the receipts for all of plaintiff's transactions with defendants included a clear disclaimer of "No Refunds. Exchanges within 14 days", refund policy disclosure on a receipt does not satisfy the clear statutory command of NY GBL §218-a to notify customers by positing the refund policy "(a) on a sign attached to the item itself; or (b) on a sign affixed to each cash register or point of sale; or (c) on a sign so situated as to be clearly visible to the buyer from the cash register; or (d) on a sign posted at each store entrance used by the public". As such, this branch of defendants' motion is denied.

Lack of a Beauty Salon License (Sixth Cause of Action)

The branch of defendants' motion to dismiss plaintiff's sixth cause of action alleging that defendants failed to obtain a proper beauty salon license is granted. Plaintiff simply alleges that defendants are required to possess a license from the New York State Division of Licensing to operate a beauty salon/spa and that defendants did not obtain said license. Plaintiff does not cite the specific statute or regulations underlying its cause of action. However, plaintiff's claim appears to relate to 27 GBL §§400-417 and 19 NYCRR 160.3, which requires licensure of beauty salons, including estheticians.

The "Appearance Enhancement" licensing regime does not allow for a private right of action to enforce penalties for the failure to obtain a license. Plaintiff in her memorandum in opposition states that "[d]efendants' argument that there is no right of action arising from lack of the State license is unsupported by any authority and is contrary to established precedent. Lack of a license would render defendants' transactions with plaintiff unlawful, and thus voidable", however, plaintiff provided no legal authority or statutory authority in support of her argument (NYSCEF #17 – Pl's Opposition at 11). A perusal of the statutory and regulatory regime reveals no explicit authority allowing an individual to challenge the lack of licensure for a beauty salon. Indeed, 27 GBL §410(2), which governs unlicensed activities, makes no mention of a private right of action and only authorizes the New York Secretary of State to act against an unlicensed entity. The sixth cause of action is dismissed.

Plaintiff's Inability to Obtain the Previously Bargained-For Facials (Seventh Cause of Action)

The branch of defendants' motion to dismiss plaintiff's seventh cause of action alleging that plaintiff was denied the benefit of the initial package of facials is granted. Plaintiff alleges that, due to defendants' conduct, plaintiff "could not

return to the Location for the facials and masks and was thus damaged" (NYSCEF #2 at ¶47). Plaintiff attempts to morph this argument in her memorandum in opposition to claim that due to defendants "outrageous conduct", defendants rendered continued treatment of plaintiff improper and thus disabled themselves from performance of the bargain and deprived plaintiff the benefit of the bargain (NYSCEF #17 at 11). Defendants argue that "[p]laintiff has not alleged any facts that support her contention that [d]efendants have prevented her from receiving the initial package that she purchased, which included monthly facials" (NYSCEF #9 – Def's Memo of Law at ¶70).

Defendants correctly points out that plaintiff's complaint does not allege any facts indicating that defendants prevented her from receiving the facial package as contracted. The elements of a breach of contract are: (1) formation of a contract between the parties; (2) performance by one party; (3) failure to perform by the other party; and (4) resulting damage (*see Harris v Seward Park Hous. Corp.*, 79 AD3d 425, 426 [1st Dept 2010]). There is no indication that defendants refused to perform their end of the bargain. There is also no indication that plaintiff's claim sounds in impossibility, impracticability, or frustration of purpose. As such, plaintiff's discomfort in returning to defendants' business is not a viable cause of action. Plaintiff's seventh cause of action is dismissed.

Defendants' Motion to Dismiss this Matter as to Epidermis LLC, Epidermis At Bryant Park, Inc., and Epidermis

Defendants' attempt to dismiss this matter as to defendants Epidermis LLC, Epidermis at Bryant Park, Inc., and Epidermis is denied. Ohad Sinvani avers that he is "part-owner of SIX AVE COSMETICS, LLC, improperly sued herein as SIX AVENUE COSMETICS, LLC" and that "[d]efendant EPIDERMIS AT BRYANT PARK, INC. is a dissolved entity that did not have any involvement whatsoever with the subject purchases made by plaintiff at the subject location" (NYSCEF #10 – Affidavit of Ohad Sinvani at ¶¶3-4). Sinvani further claims that "[d]efendant EPDIERMIS LLC is an active entity but did not have any involvement with the subject purchases made by plaintiff at the subject location" and, therefore, this matter should be dismissed as against defendants Epidermis LLC, Epidermis at Bryant Park, and Epidermis. However, defendants do not offer any proof that Epidermis at Bryant Park was dissolved and, other than Sinvani's self-serving affidavit, do not offer any proof that the Epidermis entities were not involved in the ownership or management of the Epidermis beauty salon located at 743 Avenue of the Americas. As such, dismissal of defendants Epidermis at Bryant Park, Inc., Epidermis LLC, and Epidermis is premature at this time.

As some of plaintiff's claims have survived the motion to dismiss, it is improper to award defendants any costs at this time and defendants' motion for costs is denied.

Accordingly, it is hereby ORDERED that defendants' motion is granted to the extent that plaintiff's second, third, fourth, sixth, seventh, and eighth causes of action are dismissed; it is further

ORDERED that defendants' motion is denied as to plaintiff's first and fifth causes of action; it is further

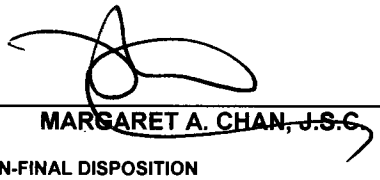
ORDERED that defendants' motion to dismiss Epidermis LLC, Epidermis At Bryant Park, Inc., and Epidermis as improper parties is denied; it is further

ORDERED that defendants' motion for costs is denied; it is further

ORDERED that defendants shall file an answer to the complaint within 20 days of service of a copy of this Decision and Order with notice of entry; and it is further

ORDERED the parties shall appear for a preliminary conference on July 17, 2019 at 10:00 AM in Part 33, Room 101, 71 Thomas Street, New York, New York.

This constitutes the decision and order of the court.



6/13/2019
DATE

MARGARET A. CHAN, J.S.C.

CHECK ONE:	[ ]	CASE DISPOSED		[X]	NON-FINAL DISPOSITION		
	[ ]	GRANTED	[ ] DENIED	[X]	GRANTED IN PART	[ ]	OTHER
APPLICATION:	[ ]	SETTLE ORDER		[ ]	SUBMIT ORDER		
CHECK IF APPROPRIATE:	[ ]	INCLUDES TRANSFER/REASSIGN		[ ]	FIDUCIARY APPOINTMENT	[ ]	REFERENCE