UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

YESH MUSIC, LLC, Plaintiff, v. REGENTS OF THE UNIVERSITY OF MINNESOTA, Defendant.	Case No. 1:19-cv-05512-DLI-SMG **NOTICE OF MOTION TO DISMISS**

Regents of the University of Minnesota ("University") hereby moves the Court for an order:

1. Dismissing without prejudice the Complaint against the University pursuant to Fed. R. Civ. P. 12(b)(2); or, in the alternative,

2. Dismissing with prejudice the Complaint against the University pursuant to Fed. R. Civ. P. 12(b)(1); or, the alternative,

3. Staying the litigation pending a decision by the United States Supreme Court in *Allen v. Cooper,* Case No. 18-877 (S. Ct. June 5, 2019).

This motion is based upon Plaintiff's Complaint, the Memorandum of Law in Support of Defendant's Motion to Dismiss, and all other files, records, and proceedings in this action.

Dated: November 5, 2019

Respectfully submitted,

By /s/ *Michael N. Rader*

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CERTIFICATE OF SERVICE

I certify that this document is being filed through the Court's electronic filing system, which serves counsel for other parties who are registered participants as identified on the Notice of Electronic Filing (NEF). Any counsel for other parties who are not registered participants are being served by first class mail on the date of electronic filing.

/s/ *Michael N. Rader*
Michael N. Rader

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

YESH MUSIC, LLC, Plaintiff, v. REGENTS OF THE UNIVERSITY OF MINNESOTA, Defendant.	Case No. 1:19-cv-05512-DLI-SMG

MEMORANDUM OF LAW IN SUPPORT
OF DEFENDANT'S MOTION TO DISMISS

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Defendant Regents of the University of Minnesota ("University" or "University of Minnesota") moves to dismiss the Complaint on two grounds. First, the Complaint should be dismissed for lack of personal jurisdiction. Plaintiff Yesh Music, LLC, cannot satisfy the requirements either of New York's long-arm statute or of constitutional due process. Second, Plaintiff's claims are barred by the University's sovereign immunity. Federal courts have uniformly concluded that state sovereign immunity bars claims for damages for alleged copyright violations. Therefore, the University respectfully asks the Court to dismiss Plaintiff's complaint. In the alternative, the University requests that the Court stay the litigation pending decision by the United States Supreme Court in *Allen v. Cooper*.[1]

BACKGROUND

The University of Minnesota is a land-grant university with five campuses located throughout the State of Minnesota.[2] Plaintiff acknowledges in the Complaint that the University is "an educational institution in Minnesota." (Complaint (Doc. No. 1) ¶ 22.) Plaintiff alleges that in New York, the University engages in student recruitment (*id.* ¶¶ 7, 8, 9), advertisement and promotion of University books (*id.* ¶¶ 7, 13), and alumni events (*id.* ¶ 14). The Complaint does not connect any of these activities to the complained-of conduct: alleged copyright infringement.

Plaintiff alleges that it is the owner of a musical work, that the University "created a video advertisement which it posted on its YouTube page," and that the "subject advertisement synchronized plaintiff's Copyrighted Recording without license or authority." (*Id.* ¶¶ 21, 23.)

[1] The Court granted certiorari to consider the issue of whether Congress validly abrogated state sovereign immunity from copyright claims in *Allen v. Cooper*, 139 S. Ct. 2664, 2665 (June 3, 2019).

[2] *See* About Us, University of Minnesota, https://twin-cities.umn.edu/about-us (last visited November 5, 2019).

Plaintiff includes a link to a Dropbox account (an account not connected to the University) where a copy of the video is stored (*id.* ¶ 24), which shows that this video was student-produced.

Plaintiff asserts two copyright claims against the University, seeking damages under the Copyright Act, 17 U.S.C. §§ 101, et seq., and the Digital Millennium Copyright Act ("DMCA").

ARGUMENT

The Court should dismiss the Complaint for two reasons: (1) lack of personal jurisdiction and (2) sovereign immunity. First, this Court lacks personal jurisdiction over the University of Minnesota. Neither New York's long-arm statute nor constitutional due process permit requiring the University of Minnesota to defend these claims in New York. Second, the University's sovereign immunity bars the copyright claims. Federal courts—including in a case involving the University of Minnesota—have found that Congress's attempted abrogation of state sovereign immunity in the Copyright Remedy Clarification Act was unconstitutional.

I. Plaintiff's Complaint fails for lack of personal jurisdiction over the University.

Plaintiff's Complaint must be dismissed because the U.S. District Court for the Eastern District of New York lacks personal jurisdiction over the University. To determine whether a forum state has personal jurisdiction over a non-resident defendant, a court must first analyze whether that state's long-arm statute grants jurisdiction and, second, whether the exercise of jurisdiction is consistent with federal due process requirements. *See Grand River Enters. Six Nations, Ltd. v. Pryor*, 425 F.3d 158, 165 (2d Cir. 2005).

A. Plaintiff's allegations do not satisfy New York's long-arm statute.

Plaintiff relies on New York's long-arm statute, N.Y. C.P.L.R. § 302(a)(3), as support for personal jurisdiction over the University. (Compl. ¶¶ 5, 16). Under Section 302(a)(3), a plaintiff has the burden of establishing five discrete elements to support the exercise of personal jurisdiction, including—most relevant to this motion—the following: (1) that the act caused

injury to a person or property within this state and (2) that the defendant expected or reasonably should have expected the act to have consequences in this state. *See Sole Resort, S.A. de C.V. v. Allure Resorts Mgmt., LLC*, 450 F.3d 100, 106 (2d Cir. 2006). Because Plaintiff cannot establish either of these required elements, its complaint should be dismissed for lack of personal jurisdiction.

First, Plaintiff cannot establish that the posting of this YouTube video caused an injury in New York, an essential element under New York's long-arm statute. "New York courts uniformly hold that the situs of a nonphysical, commercial injury is 'where the critical events associated with the dispute took place.'" *United Bank of Kuwait, PLC v. James M. Bridges, Ltd.*, 766 F. Supp. 113, 116 (S.D.N.Y. 1991) (quoting *Am. Eutectic Welding Alloys Sales Co. v. Dytron Alloys Corp.*, 439 F.2d 482, 433 (2d Cir. 1971)). Plaintiff has not alleged that any "critical events" (here, presumably, the posting of the video) took place in New York.

With respect to a copyright claim, the U.S. Court of Appeals for the Second Circuit has made clear that a posting on the Internet—in and of itself—does not give rise to jurisdiction in New York. *See Troma Entm't, Inc. v. Centennial Pictures, Inc.*, 729 F.3d 215, 218 (2d Cir. 2013) (discussing *Penguin Group (USA), Inc. v. Am. Buddha*, 946 N.E.2d 159, 163 (N.Y. 2011)). Rather, in a copyright case involving the Internet, a plaintiff must plead more than allegations of "remote or consequential injuries such as lost commercial profits which occur in New York only because the plaintiff is domiciled or doing business here." *Id.* (citation omitted). Allegations that rely only on speculative and indirect injuries such as simple economic losses caused by alleged intellectual property infringement "are not alone a sufficient basis for personal jurisdiction over the persons who caused them." *Id.* at 220–21. Here, the Complaint alleges no connection to New York or any damage that is not speculative.

This case is distinct from the narrow holding by the New York Court of Appeals in *Penguin Group (USA) Inc. v. Am. Buddha*, 946 N.E.2d 159, 161, 163 (N.Y. 2011). There, the New York Court of Appeals received a certified question from the Second Circuit: "In copyright infringement cases, is the situs of injury for purposes of determining long-arm jurisdiction under N.Y. C.P.L.R. § 302(a)(3)(ii) the location of the infringing action or the residence or location of the principal place of business of the copyright holder?" *Id.* at 161. Before answering the question, the New York Court of Appeals narrowed the scope of the question to specifically address only "copyright infringement cases involving the uploading of a copyrighted printed literary work onto the Internet." *Id.* The court then answered its narrowed question by holding that the situs of injury is the location of the copyright holder. *Id.*

The Second Circuit subsequently characterized this answer as narrow, relying on the fact that the New York Court of Appeals "carefully cabined its holding" to copyright claims involving uploading a "printed literary work onto the internet" where the defendant's intended consequences were "for anyone, in New York or elsewhere, with an Internet connection to read and *download* the books free of charge." *Troma Entm't*, 729 F.3d at 219–20 ("*Penguin II* is too narrow to control this case.") (emphasis added). In other words, the "crux" of the copyright claim in *American Buddha* was that the defendant had facilitated the downloading by "anyone with access to an Internet connection" of the entirety of the plaintiff's copyrighted works, "not merely the unlawful electronic copying or uploading of the four copyrighted books." *Am. Buddha*, 946 N.E.2d at 165.

Here, as alleged in the Complaint, there are no "printed literary works" and no allegation that the University made the subject work available for downloading "free of charge." Rather than alleging that the University uploaded Plaintiff's copyrighted work to facilitate downloading

of the work in its entirety as in *American Buddha*, the Complaint and the referenced video itself amount to allegations only that the University uploaded a student-produced video to YouTube, which allowed the video to be viewed online (rather than downloaded), and that the video used Plaintiff's song in the background. It would be a great stretch of the narrow holding in *American Buddha* and New York's long-arm statute to conclude that allegations of this kind give rise to a finding that the "situs of injury" is New York.

Further, Plaintiff cannot establish that the University expected that its alleged tortious activity would have direct consequences in New York, another essential element under New York's long-arm statute. A plaintiff must show that the alleged tortfeasor "expects, or has reason to expect, that his or her tortious activity in another State will have *direct* consequences in New York" to support the exercise of personal jurisdiction. *LaMarca v. Pak-Mor Mfg. Co.*, 95 N.Y.2d 210, 214 (N.Y. 2000) (citing *Ingraham v. Carroll*, 90 N.Y.2d 592, 598 (N.Y. 1997) (internal alterations omitted). Plaintiff has not alleged any facts to support the notion that the University of Minnesota, by allegedly posting a student-produced video on YouTube, expected to cause any consequences in New York.

Plaintiff has not and cannot satisfy its burden under New York's long-arm statute, rendering the exercise of jurisdiction inappropriate in this case.

B. Constitutional due process requires that Plaintiff's complaint be dismissed.

Plaintiff's allegations do not satisfy due process. The key question is whether the University has established "minimum contacts" with New York such that maintenance of a suit here does not offend "traditional notions of fair play and substantial justice." *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940)) (quotation marks omitted).

First, courts routinely decline to exercise general personal jurisdiction over non-domiciliary educational institutions based on the types of contacts (e.g., recruiting of students and alumni events) alleged in the Complaint. *See Am. Univ. Sys., Inc. v. Am. Univ.*, 858 F. Supp. 2d 705, 713–14 (N.D. Tex. 2012) (collecting cases[3] where "courts have unanimously determined that the institution is not subject to general personal jurisdiction where its only contacts with the forum state are its involvement in activities that are typical of a nationally prominent university"); *see also Thackurdeen v. Duke Univ.*, 130 F. Supp. 3d 792, 799–800 (S.D.N.Y. 2015), *aff'd*, 660 F. App'x 43 (2d Cir. 2016) (while evaluating New York's long arm statute, stating that "a university or college cannot be deemed 'at home' in a forum merely because it engages in the sort of minimal and sporadic contact with the state that is common to all national universities" and declining to "disturb what is a well-established rule in this district": "national universities are not subject to general jurisdiction outside of their state of incorporation or operation"). Thus, to the extent Plaintiff contends that the general contacts of the University somehow satisfy constitutional due process, its contention should be rejected.

Second, Plaintiff cannot establish specific personal jurisdiction. With respect to specific jurisdiction, the question is whether the plaintiff can show that its claims arise from contacts with the forum state. *See Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 (1984). A defendant's specific alleged conduct "must create a substantial connection with the forum State." *SPV Osus Ltd. v. UBS AG*, 882 F.3d 333, 344 (2d Cir. 2018) (quoting *Walden v. Fiore*, 571 U.S. 277, 284 (2014)); *see also Goodyear Dunlop Tires Operations, S.A. v. Brown*,

[3] *Richards v. Duke University*, 480 F. Supp. 2d 222, 230 (D.D.C.2007); *Scherer v. Curators of Univ. of Mo. & Law Sch. Admission Council*, 152 F. Supp. 2d 1278, 1282 (D. Kan. 2001); *Gallant v. Trs. of Columbia Univ. in City of New York*, 111 F. Supp. 2d 638, 640–44 (E.D. Pa. 2000); *Park v. Oxford Univ.*, 35 F. Supp. 2d 1165, 1167–68 (N.D. Cal. 1997), *aff'd*, 165 F.3d 917 (9th Cir. 1998); *Hardnett v. Duquesne Univ.*, 897 F. Supp. 920, 923–25 (D. Md. 1995); *Ross v. Creighton University*, 740 F. Supp. 1319, 1323 (N.D. Ill.1990), *rev'd in part on other grounds*, 957 F.2d 410 (7th Cir. 1992).

564 U.S. 915, 919 (2011) ("Specific jurisdiction . . . depends on an affiliation between the forum and the underlying controversy, principally, activity or an occurrence that takes place in the forum State and is therefore subject to the State's regulation." (quotation marks, citation, and alteration omitted)). The focus is on whether the exercise of personal jurisdiction "is reasonable under the circumstances of the particular case." *Fort Knox Music Inc. v. Baptiste*, 203 F.3d 193, 196–97 (2d Cir. 2000) (quoting *Shaffer v. Heitner*, 433 U.S. 186, 204 (1977)) (alteration and quotation marks omitted).

Here, Plaintiff does not allege that any tortious conduct took place in New York; rather, it alleges only that the University of Minnesota posted a video on YouTube. Thus, there is no "substantial connection" to or any alleged activity within New York. Plaintiff cannot satisfy the requirements of constitutional due process here, and its claims should therefore be dismissed.

II. The copyright claims fail as a matter of law.

Plaintiff asserts two copyright claims against the University, seeking damages under the Copyright Act, 17 U.S.C. §§ 101, et seq., and under the Digital Millennium Copyright Act. The University's state sovereign immunity bars these claims because, as federal courts have uniformly concluded, Congress's effort to abrogate state sovereign immunity with the Copyright Remedy Clarification Act ("CRCA"), 17 U.S.C. § 511(a)(1994), was unconstitutional. The United States Supreme Court has accepted certiorari to consider this issue in *Allen v. Cooper*, 139 S. Ct. 2664 (2019).

State sovereign immunity is a key part of "our constitutional structure" enshrined in the Eleventh Amendment, *Franchise Tax Bd. v. Hyatt*, 139 S. Ct. 1485, 1498 (2019), and it bars any suit against a state in federal court unless the state has consented to suit or Congress has unambiguously, and with valid authority, abrogated that immunity. *Seminole Tribe of Fla. v. Florida*, 517 U.S. 44, 54–56 (1996). Federal courts at all levels have recognized the University

of Minnesota's sovereign immunity. *Raygor v. Regents of Univ. of Minn.*, 534 U.S. 533, 538–39 (2002) (citing *Regents of Univ. of Minn. v. Raygor*, 620 N.W.2d 680, 683 (Minn. 2001)) (noting that "there is no dispute that the University [of Minnesota] is an 'arm' of the State of Minnesota"); *Turkish Coal. of Am., Inc. v. Bruininks*, 678 F.3d 617, 621 n.1 (8th Cir. 2012) ("[T]he University of Minnesota is an instrumentality of the state and entitled to share in the state's Eleventh Amendment immunity."); *Treleven v. Univ. of Minn.*, 73 F.3d 816, 818–19 (8th Cir. 1996) (same); *Walstad v. Univ. of Minn. Hosps.*, 442 F.2d 634, 641–42 (8th Cir. 1971) (holding that the University is "immune from suit as a sovereign entity").

To abrogate state sovereign immunity, Congress must both clearly express its intent to abrogate and act under a valid exercise of congressional power under Section 5 (the enforcement clause) of the Fourteen Amendment. *Seminole Tribe*, 517 U.S. at 55, 59. For an exercise under Section 5 to be valid, "[t]here must be congruence and proportionality between the injury to be prevented or remedied and the means adopted to that end." *City of Boerne v. Flores*, 521 U.S. 507, 520 (1997).

Congress did clearly express an intent to abrogate state sovereign immunity with the Copyright Remedy Clarification Act ("CRCA"), *see* 17 U.S.C. § 511(a), but, as every court to consider the issue has concluded, it failed to act under a valid exercise of constitutional authority. *See, e.g.*, *Allen v. Cooper*, 895 F.3d 337, 349 (4th Cir. 2018) (holding that Congress did not exercise valid authority in attempting to abrogate sovereign immunity in the CRCA); *Chavez v. Arte Publico Press*, 204 F.3d 601, 607 (5th Cir. 2000) (holding that Congress lacked authority to abrogate state sovereign immunity); *Campinha-Bacote v. Tenney*, No. 10-CV-3165 (RRM)(ALC), 2011 WL 703936, at *1 (E.D.N.Y. Jan. 28, 2011) ("[T]he CRCA does not abrogate the CSI's Eleventh Amendment immunity."), *report and recommendation adopted*, No.

10-CV-3165 RRM ALC, 2011 WL 705358 (E.D.N.Y. Feb. 17, 2011); *Whipple v. Utah*, No. 2:10-CV-811-DAK, 2011 WL 4368568, at *19–20 (D. Utah Aug. 25, 2011) (dismissing copyright infringement claims against state entities on sovereign immunity grounds); *Romero v. Cal. Dep't of Transp.*, No. CV 08-8047 PSG (FFMx), 2009 WL 650629, at *5 (C.D. Cal. Mar. 12, 2009) (holding that Congress did not validly abrogate sovereign immunity under the CRCA because it did not have authority to exercise this power); *De Romero v. Inst. of Puerto Rican Culture*, 466 F. Supp. 2d 410, 418 (D.P.R. 2006) (finding an arm of the Commonwealth of Puerto Rico entitled to Eleventh Amendment immunity in suits arising out of copyright infringement).

Moreover, several courts have found this lack of valid abrogation in the specific context of copyright infringement claims asserted against state universities and their employees, including claims asserted against the University of Minnesota. *See, e.g., Issaenko v. Univ. of Minn.*, 57 F. Supp. 3d 985, 1009 (D. Minn. 2014)*; see also TC Reiner v. Canale*, 301 F. Supp. 3d 727, 749 (E.D. Mich. 2018) (dismissing copyright claims, including a claim under the DMCA, against a University professor); *Israel v. Univ. of Utah*, Case No. 2:15–V–741 TS, 2017 WL 1393488, at *2 (D. Utah April 18, 2017); *Campinha-Bacote v. Bleidt*, No. H-10-3481, 2011 WL 679913, at *1 (S.D. Tex. Feb. 9, 2011); *Mktg. Info. Masters, Inc. v. Bd. of Trs. of Cal. State Univ. Sys.*, 552 F. Supp. 2d 1088, 1095 (S.D. Cal. 2008); *InfoMath, Inc. v. Univ. of Ark.*, 633 F. Supp. 2d 674, 680–81 (E.D. Ark. 2007); *Salerno v. City Univ. of N.Y.*, 191 F. Supp. 2d 352, 355–56 (S.D.N.Y. 2001).

The judicial unanimity on the issue flows from a Supreme Court decision in a matter involving the Patent Act.[4] *See Fla. Prepaid Postsecondary Educ. Expense Bd. v. Coll. Savings*

[4] Patent and Plant Variety Protection Remedy Clarification Act, 35 U.S.C. § 296(a).

Bank, 527 U.S. 627 (1999). In *Florida Prepaid*, the Supreme Court held that Congress's attempt to abrogate state sovereign immunity for claims under the Patent Act was an invalid exercise of Congress's Section 5 power. *Id*. at 647–48. Among other flaws, the Court found that Congress failed to identify a pattern of patent infringement by states that could satisfy the requirement for congruence between the wrong to be remedied and the means adopted to remedy that wrong. *Id.* at 640.

The U.S. Court of Appeals for the Fifth Circuit has succinctly reasoned why *Florida Prepaid* compelled the conclusion that Congress also did not have authority to abrogate state sovereign immunity with respect to the Copyright Act: "It is appropriate for us to adopt [the *Florida Prepaid*] analysis in the copyright context. The interests Congress sought to protect in each statute are substantially the same and the language of the respective abrogation provisions are virtually identical." *Rodriguez v. Tex. Comm'n on the Arts*, 199 F.3d 279, 281 (5th Cir. 2000).

An illustrative and frequently cited case is another decision by the Fifth Circuit. *Chavez*, 204 F.3d at 601. *Chavez* was remanded by the Supreme Court to the Fifth Circuit for consideration in light of the Court's decision in *Seminole Tribe*. *Univ. of Hous. v. Chavez*, 517 U.S. 1184 (1996). While it was on remand, the Supreme Court decided *Florida Prepaid.* The Fifth Circuit then, in *Chavez*, analyzed the question of abrogation using the three-part framework set forth in *Florida Prepaid*: "1) the nature of the injury to be remedied; 2) Congress's consideration of the adequacy of state remedies to redress the injury; and 3) the coverage of the legislation." *Chavez*, 204 F.3d at 605. The court first found that there was no evidence that the CRCA was enacted in response to a pattern of unconstitutional infringement of copyright by the states. *Id*. at 606. Next, the court found that Congress did not, in any meaningful manner,

consider the availability of state remedies. *Id*. at 607. Finally, the court concluded that the CRCA did not meet the test for congruence and proportionality required by the Supreme Court's decision in *City of Boerne*. *Id.* Thus, the *Chavez* court concluded, Congress did not have authority under Section 5 of the Fourteenth Amendment to abrogate state sovereign immunity for copyright claims. *Id*. at 608. As noted above, this reasoning—and conclusion—has been uniformly followed by federal courts.

Various plaintiffs have argued (and currently are arguing to the United States Supreme Court in *Allen v. Cooper*) that abrogation was valid under the Intellectual Property Clause of Article I of the U.S. Constitution. Courts have also uniformly rejected this argument because the U.S. Supreme Court expressly held that Congress cannot rely on Article I to abrogate Eleventh Amendment immunity. *See Seminole Tribe*, 517 U.S. at 59–60, 66 (overruling a prior decision that held that Congress could abrogate state sovereign immunity under the Interstate Commerce Clause of Article I); *see also Allen*, 895 F.3d at 348 (citing *Seminole Tribe*); *Chavez*, 204 F.3d at 604–05 (citing *Seminole Tribe*); *Jacobs v. Memphis Convention & Visitor's Bureau*, 710 F. Supp. 2d 663, 671–72 (W.D. Tenn. 2010) ("Congress may not, of course, base its abrogation of the States' Eleventh Amendment immunity upon the powers enumerated in Article I." (quoting *Bd. of Trs. of Univ. of Ala. v. Garrett*, 531 U.S. 356, 364 (2001)) (quotation marks omitted)); *Jehnsen v. N.Y. State Martin Luther King, Jr. Inst. for Nonviolence*, 13 F. Supp. 2d 306, 311 (N.D.N.Y. 1998) ("Congress is without authority to abrogate state sovereign immunity for copyright cases."). The University asks this Court to similarly reject this argument, should Plaintiff choose to assert it.

CONCLUSION

For the foregoing reasons, the University respectfully requests that the Complaint be dismissed in its entirety. In the alternative, should the Court find personal jurisdiction to be

appropriate here, the University suggests that the Court stay the litigation pending decision by the United States Supreme Court in *Allen v. Cooper*.

Dated: November 5, 2019

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that this document is being filed through the Court's electronic filing system, which serves counsel for other parties who are registered participants as identified on the Notice of Electronic Filing (NEF). Any counsel for other parties who are not registered participants are being served by first class mail on the date of electronic filing.

/s/ *Michael N. Rader*
Michael N. Rader

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

YESH MUSIC, LLC, Plaintiff, v. REGENTS OF THE UNIVERSITY OF MINNESOTA, Defendant.	Case No. 1:19-cv-05512-DLI-SMG **[PROPOSED] ORDER OF DISMISSAL**

This matter came before the Court on Defendant's motion under Fed. R. Civ. P. 12(b)(2) to dismiss without prejudice all of Plaintiff's claims or, in the alternative, to dismiss with prejudice all of Plaintiff's claims under Fed. R. Civ. P. 12(b)(1) or, in the alternative, to stay the litigation pending a decision by the United States Supreme Court in *Allen v. Cooper,* Case No. 18-877 (S. Ct. June 5, 2019).

Based on all the files, records, and proceedings,

IT IS HEREBY ORDERED that the motion is GRANTED. Plaintiff's claims are [dismissed without prejudice under Fed. R. Civ. P. 12(b)(2)] [dismissed with prejudice under Fed. R. Civ. P. 12(b)(1)]. Plaintiff shall take nothing by its claims in this action.

[IT IS HEREBY ORDERED that this case is stayed pending decision by the United States Supreme Court in *Allen v. Cooper,* Case No. 18-877 (S. Ct. June 5, 2019).]

SO ORDERED. LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: _____	_____ UNITED STATES DISTRICT JUDGE