



**TABLE OF CONTENTS**

	<u>PAGE</u>
TABLE OF AUTHORITIES .....	ii
PRELIMINARY STATEMENT .....	1
SUMMARY OF ALLEGATIONS IN THE COMPLAINT .....	4
ARGUMENT .....	5
I.    THE COURT SHOULD DISMISS THE COMPLAINT UNDER C.P.L.R. § 3211(a)(1) BECAUSE CNN AMERICA AND CNN PRODUCTIONS ARE IMPROPER PARTIES .....	5
II.   IN THE ALTERNATIVE, THE COURT SHOULD DISMISS THE COMPLAINT UNDER C.P.L.R. § 3211(a)(8) FOR LACK OF PERSONAL JURISDICTION .....	6
A.   The Court Does Not Have Specific Jurisdiction Over CNN America and CNN Productions .....	7
B.   The Court Does Not Have General Jurisdiction Over CNN America and CNN Productions .....	9
CONCLUSION .....	10

**TABLE OF AUTHORITIES**

PAGE

CASES

*Adler v. 20/20 Cos.*, 82 A.D.3d 918 (2d Dep’t 2011)..... 6

*Biondi v. Beekman Hill House Apt. Corp.*, 257 A.D.2d 76 (1st Dep’t 1999)..... 5

*Connolly v. InfoSpace, Inc.*, Index No. 600732/2007, 18 Misc.3d 1123(A),  
2008 WL 253033 (N.Y. Sup. Ct. Jan. 22, 2008)..... 6

*Daimler AG v. Bauman*, 571 U.S. \_\_\_, 134 S.Ct. 746 (2014)..... 7, 9

*Estate of Sa’adoon v. Prince*, Case No. 1:09-cv-615 (E.D. Va., filed July 14, 2009)..... 3

*Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. \_\_\_,  
131 S.Ct. 2846 (2011)..... 6, 9

*Guido v. Orange Regional Medical Center*, 958 N.Y.S.2d 195 (2d Dept. 2013)..... 6

*Harris v. Kellogg, Brown & Root Services, Inc.*, 796 F. Supp. 2d 642 (W.D. Pa. 2011)..... 3

*Hinsch v. Outrigger Hotels Hawaii*, 153 F. Supp. 2d 209 (E.D.N.Y. 2001)..... 8

*Kramer v. Hotel Los Monteros, S.A.*, 394 N.Y.S.2d 415 (1st Dep’t 1977) ..... 8

*Lawrence v. Kennedy*, 944 N.Y.S.2d 577 (2d Dep’t 2012) ..... 6

*Licci v. Lebanese Canadian Bank*, 20 N.Y.3d 327 (2012) ..... 3, 7

*Rose v. Arthur J. Gallagher & Co.*, 87 A.D.3d 733 (2d Dep’t 2011)..... 3

*Sonera Holding, B.V. v. Cukorova Holding*, 750 F.3d 221 (2d Cir. 2014)..... 9

*Susman v. Commerzbank Capital Markets Corp.*, 95 A.D.3d 589 (1st Dep’t 2012)..... 5

STATUTES & RULES

C.P.L.R. § 302(a) ..... 3, 6, 7

C.P.L.R. § 302(a)(1) ..... 3, 7

C.P.L.R. § 302(a)(3) ..... 3, 7, 8

Defendants CNN America, Inc. (“CNN America”) and CNN Productions, Inc. (“CNN Productions”) bring this motion to dismiss pursuant to C.P.L.R. § 3211(a)(1) because both are improper parties (Point I below), and pursuant to C.P.L.R. § 3211(a)(8) because of the absence of personal jurisdiction over them (Point II below).<sup>1</sup>

### **PRELIMINARY STATEMENT**

The plaintiffs have sued the wrong defendants in the wrong jurisdiction, almost certainly because had they sued the right defendants in the right jurisdiction, the settlement value of their case would be reduced to near nothing. Plaintiffs, who claim to be EMTs stationed in Baghdad, Iraq, allege that a reporter resisted and possibly bit them when they were providing medical assistance to her near the U.S. Embassy in Baghdad. Despite their casual disregard for the medical privacy of their patient, they notably omit the fact that the U.S. Embassy summoned the EMTs only after the reporter (Ms. Damon) had fallen, hit her head, lost consciousness and began bleeding. They also omit that Damon’s head injury was significant enough that U.S. Embassy personnel required her to be transported by helicopter to have a CT scan.

Plaintiffs’ plan is evident: omit material information from their Complaint, name the wrong parties in the wrong jurisdiction, try to embarrass a widely-honored journalist and claim that they are each entitled to a million-dollar payday because of an alleged bite they sustained while treating a reporter in a war zone who had a serious head injury. This is apparently done in the hopes that CNN America and CNN Productions settle for a large sum instead of litigating. In

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<sup>1</sup> To the best of CNN America and CNN Productions’ knowledge, the third and final defendant, Arwa Damon, has not been served the summons and complaint. In addition, plaintiffs have not filed an affidavit of service as to Ms. Damon. Accordingly, this motion is brought only by CNN America and CNN Productions although, as noted in Part II *infra*, it is abundantly clear that this Court lacks jurisdiction over Ms. Damon.

addition to the dubious ethics it takes to advance such claims, there are numerous legal problems with this strategy, two of which are the subject of this motion.<sup>2</sup>

First, CNN America and CNN Productions are improper parties. Other than being perceived deep pockets, the only reason these defendants are named in this lawsuit is because of plaintiffs' allegation that they employed the reporter. But this allegation is demonstrably false. As documentary evidence proves, non-party Cable News International, Inc. ("CNI"), employs the reporter, Arwa Damon. Because CNN America and CNN Productions are improper parties, the Court should dismiss the Complaint as to them.

Second, this Court lacks jurisdiction over CNN America and CNN Productions. As the U.S. Supreme Court held earlier this year, it would violate the Due Process Clause of the U.S. Constitution for a court to exercise general jurisdiction over a corporation unless the corporation is incorporated in, or has its principal place of business in the forum state. Here, CNN Productions is incorporated in and has its principal place of business in Georgia. CNN America is incorporated in Delaware and has its principal place of business in Georgia. Accordingly, under controlling Supreme Court precedent, CNN America and CNN Productions are not subject to this Court's general jurisdiction.<sup>3</sup>

Nor are they subject to this Court's specific jurisdiction. New York's long-arm statute permits an exercise of specific jurisdiction where a defendant "commits a tortious act with the

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<sup>2</sup> If plaintiffs pursue this action against the proper parties, then they will have to overcome additional hurdles, including but not limited to, whether the doctrine of *forum non conveniens* applies, whether – if Iraqi law applies – plaintiffs may pursue a claim of vicarious liability or a claim for punitive damages, whether – if New York law applies – they have stated a claim for intentional infliction of emotional distress, and whether plaintiffs' own conduct on July 19, 2014 was proper.

<sup>3</sup> If plaintiffs name CNI – the party that actually employs Ms. Damon – CNI will bring a motion to dismiss for lack of personal jurisdiction, as it is incorporated in Delaware, with its principal place of business in Georgia, and because there is no basis for an exercise of specific jurisdiction under New York's long-arm statute.

state” or “commits a tortious act without the state causing injury to person or property within the state,” C.P.L.R. § 302(a)(3)(i) & (ii), but here the Complaint itself makes clear that both the alleged tort and the alleged injury were caused not in New York, but in Iraq. The long-arm statute allows for an exercise of specific jurisdiction where a defendant “transacts any business in New York,” C.P.L.R. § 302(a)(1), but only where there is an “articulable nexus” or “substantial relationship,” between the business transaction and the claim. *See, e.g., Licci v. Lebanese Canadian Bank*, 20 N.Y.3d 327, 339 (2012). Here the Complaint is utterly devoid of any allegation that connects anything in New York to the alleged incident in Baghdad.

Plaintiffs must bring their case either in Delaware or Georgia (where CNI – Ms. Damon’s actual employer – is incorporated and maintains its principal place of business, respectively) or in Baghdad (where the incident allegedly occurred). In either event, Iraqi law will almost certainly apply to plaintiffs’ claim, which is bad news for plaintiffs because Iraqi law does not permit either punitive damages or vicarious liability in a case like this one.<sup>4</sup> Nevertheless, for the reasons discussed below, plaintiffs’ Complaint against CNN America and CNN Productions should be dismissed.

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<sup>4</sup> Where there is a conflict of laws regarding the availability of punitive damages, the law of the place of the tort (here, Iraq) applies. *See, e.g., Rose v. Arthur J. Gallagher & Co.*, 87 A.D.3d 733, 733 (2d Dep’t 2011). “Punitive damages are not available under Iraqi law.” *Harris v. Kellogg, Brown & Root Services, Inc.*, 796 F. Supp. 2d 642, 666 (W.D. Pa. 2011). Where there is a conflict of laws regarding vicarious liability, and where as here, the plaintiffs and defendants appear to be domiciled in different jurisdictions, the law of the state of the tort (Iraq) will usually apply. *Edwards v. Erie Coach Lines Co.*, 17 N.Y.3d 306, 330 (2011). “Vicarious liability does not extend under Iraqi Law to privately owned companies which do not have a direct contractual relationship with the government of Iraq or any entity wholly or majority owned by it.” Expert Report of Haider Ala Hamoudi ¶ 20, *Estate of Sa’adoon v. Prince*, Case No. 1:09-cv-615 (E.D. Va., filed July 14, 2009) (Dkt. No. 15-2).

## SUMMARY OF ALLEGATIONS IN THE COMPLAINT

Plaintiffs allege that, at all times relevant to their Complaint, they were employed in Baghdad, Iraq as emergency medical technicians (“EMTs”) as part of a medical team stationed at the U.S. Embassy. *See* Compl. ¶¶ 1, 16. They further allege that, at all times relevant to their Complaint, defendant Arwa Damon, a reporter, was based in Baghdad. *Id.* ¶ 6.<sup>5</sup> On July 19, 2014, plaintiffs allege that they were providing medical assistance to Ms. Damon when she became unruly and violent. *Id.* ¶¶ 15-20, 25. For the alleged injuries, plaintiffs are seeking \$2 million in damages. *Id.* ¶ 34. Plaintiffs omit from their Complaint the critical information that U.S. Embassy personnel called them to the scene because Ms. Damon was bleeding from the head as a result of a fall that had knocked her unconscious and because Embassy personnel were so concerned about Ms. Damon’s head injury that they required her to be transported by helicopter to have a CT scan.

CNN America and CNN Productions are named in the lawsuit on a vicarious liability theory, *i.e.*, that they employed Ms. Damon at the time of the alleged Baghdad incident. *Id.* ¶¶ 7, 14-15. However, Ms. Damon’s employment contract conclusively establishes that neither CNN entity employs her. *See* Affidavit of David Vigilante, dated Sept. 3, 2014 (“Vigilante Aff.”), ¶ 4 & Ex. A; *see also id.* ¶¶ 2, 3. Moreover, although CNN America and CNN Productions are authorized to do business in New York, *see* Compl. ¶¶ 2, 3, neither is incorporated in New York nor has its principal place of business in New York. Defendant CNN America is a Delaware corporation with its principal place of business in Georgia. *Id.* ¶ 2; Vigilante Aff. ¶ 2.

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<sup>5</sup> Ms. Damon has been described as an “Emmy-award winning Senior International Correspondent, living and working out of Beirut and covering stories from some of the most precarious, yet captivating places on Earth that have few or no laws protecting press freedom and widespread intimidation of journalists.” “Arwa Damon | 2014 Courage In Journalism Award,” available at <http://www.iwfmf.org/arwa-damon>.

Defendant CNN Productions is incorporated in and has its principal place of business in Georgia. Compl. ¶ 3; Vigilante Aff. ¶ 3. By contrast, CNI – Ms. Damon’s actual employer – is incorporated in Delaware and maintains its principal place of business in Georgia; it is not registered to do business in New York. Vigilante Aff. ¶ 4.

### ARGUMENT

#### **I. THE COURT SHOULD DISMISS THE COMPLAINT UNDER C.P.L.R. § 3211(a)(1) BECAUSE CNN AMERICA AND CNN PRODUCTIONS ARE IMPROPER PARTIES**

The Court should dismiss the case against CNN America and CNN Productions because they are improper parties. Contrary to plaintiffs’ allegations, Ms. Damon is not employed by either CNN entity; rather, she is employed by non-party CNI, a Delaware corporation headquartered in Georgia.

Under C.P.L.R. § 3211(a)(1), a court may dismiss an action if “a defense is founded upon documentary evidence.” *Id.* In cases where the court considers documentary evidence on a motion to dismiss, the complaint’s allegations “are not deemed true” and “[t]he motion should be granted where the essential facts have been negated beyond substantial question by the affidavits and evidentiary matter submitted.” *Biondi v. Beekman Hill House Apt. Corp.*, 257 A.D.2d 76, 81 (1st Dep’t 1999).

Here, Damon’s employment contract conclusively demonstrates that she was employed by CNI, not by CNN America or CNN Productions. *See* Vigilante Aff., ¶ 4 & Ex. A (relevant pages of Damon’s employment agreement). Courts have routinely concluded that an employment agreement is sufficient documentary evidence negating an allegation in the complaint that is contrary to the agreement. *See, e.g., Susman v. Commerzbank Capital Markets Corp.*, 95 A.D.3d 589, 589-90 (1st Dep’t 2012) (affirming dismissal of complaint where



employment agreement conclusively rebutted plaintiffs' allegations); *Lawrence v. Kennedy*, 944 N.Y.S.2d 577, 581 (2d Dep't 2012) (affirming dismissal of complaint under C.P.L.R. §3211(a)(1) based on an employment agreement); *Adler v. 20/20 Cos.*, 82 A.D.3d 918 (2d Dep't 2011) (affirming dismissal of complaint where executed employment agreement contained forum selection clause); *Connolly v. InfoSpace, Inc.*, Index No. 600732/2007, 18 Misc.3d 1123(A), 2008 WL 253033, at \*2 (N.Y. Sup. Ct. Jan. 22, 2008) (dismissing cause of action that was precluded by employment agreement); *cf. Guido v. Orange Regional Medical Center*, 958 N.Y.S.2d 195, 198 (2d Dep't 2013) (“[T]he severance agreement submitted by ORMC was documentary evidence within the meaning of CPLR 3211(a)(1), and the terms of that agreement conclusively demonstrate that the plaintiff's employment was at-will.” (citations omitted)).

Plaintiffs have sued the wrong entities, and consequently, the Court should dismiss the Complaint against them.

## **II. IN THE ALTERNATIVE, THE COURT SHOULD DISMISS THE COMPLAINT UNDER C.P.L.R. § 3211(a)(8) FOR LACK OF PERSONAL JURISDICTION**

Not only are CNN America and CNN Productions the wrong parties, but the Court should also dismiss the Complaint because it lacks specific jurisdiction under New York's long-arm statute, C.P.L.R. § 302(a) and because an assertion of general jurisdiction would violate constitutional due process. Specific jurisdiction exists where the cause of action arises out of a defendant's contact with the forum. *See* C.P.L.R. § 302(a); *see also Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. \_\_\_, 131 S.Ct. 2846, 2851 (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 . . . .” (alteration and internal quotation marks omitted)). By contrast, general jurisdiction – where the defendant's actions do not arise out of the defendant's contact with the forum state – exists only when a corporation's

“affiliations with the state are ‘so continuous and systematic’ as to render it essentially at home in the forum state.” *Goodyear*, 131 S.Ct. at 2851.

In a major ruling earlier this year that significantly limits where corporations are subject to general jurisdiction, the U.S. Supreme Court held that, absent exceptional circumstances, a corporation is subject to the general jurisdiction only of the state in which it is incorporated and the state in which its principal place of business is located. *Daimler AG v. Bauman*, 571 U.S. \_\_\_, 134 S.Ct. 746 (2014). Because neither CNN America nor CNN Productions is incorporated in New York or has its principal place of business in New York, the Court should dismiss the Complaint for lack of personal jurisdiction.

**A. The Court Does Not Have Specific Jurisdiction Over CNN America and CNN Productions**

The Court does not have specific jurisdiction over CNN America and CNN Productions under New York’s long-arm statute, C.P.L.R. § 302(a), because there is no connection whatsoever between New York and the causes of action alleged. The potentially relevant provisions of the long-arm statute include the grants of specific jurisdiction over a person who “transacts any business within the state,” C.P.L.R. § 302(a)(1), or who “commits a tortious act without the state causing injury to person or property within the state,” so long as additional criteria are satisfied, C.P.L.R. § 302(a)(3).

Under C.P.L.R. § 302(a)(1), it is not enough that a defendant transacts any business in New York. The plaintiff must further show that there is an “articulable nexus” or “substantial relationship,” between the business transaction and the claim. *See, e.g., Licci*, 20 N.Y.3d at 339. Here, even assuming CNN America and CNN Productions transact business in New York, plaintiffs allege no facts whatsoever showing *any* connection between those transactions and the alleged Baghdad incident, let alone a proper showing of an “articulable nexus” or “substantial

relationship.” Accordingly, CNN America and CNN Productions’ New York transactions are “too attenuated” from the Baghdad incident to give rise to specific jurisdiction. *Id.* at 340.

Under C.P.L.R. § 302(a)(3) , a defendant alleged to commit a tort may be subject to specific jurisdiction but only if the defendant (i) “commits the tortious act within the state” or (ii) “commits the tortious act without the state causing injury to the person or property within the state.” *Id.* It is undisputed that the alleged tortious acts were committed in Baghdad, Compl. ¶ 8; therefore, C.P.L.R. § 302(a)(3)(i) does not apply. Furthermore, even though the alleged tortious act was committed “without the state,” C.P.L.R. § 302(a)(3)(ii) does not apply because plaintiffs’ injuries did not occur within the state. The injuries, if any, occurred in Baghdad. *See, e.g., Kramer v. Hotel Los Monteros, S.A.*, 394 N.Y.S.2d 415, 425 (1st Dep’t 1977) (“CPLR 302(a)(3)(ii) is inapplicable . . . because the injury, the dog bite, occurred in Spain even though its most severe medical result, septicemia, did not manifest itself until the plaintiff husband had returned to New York.”); *see also Hirsch v. Outrigger Hotels Hawaii*, 153 F. Supp. 2d 209, 213 (E.D.N.Y. 2001) (“[T]here is absolutely no legal basis to claim that the injury occurred in New York. This is true even if the damage first became clear and/or the injury worsened once the plaintiff returned to New York. New York law provides that an injury is considered to occur where the accident took place, not where the symptoms become manifest.”).

Therefore, the Court lacks specific jurisdiction over CNN America and CNN Productions.<sup>6</sup>

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<sup>6</sup> Although Ms. Damon has not yet been served in this case, it is abundantly clear that the Court lacks specific jurisdiction over her as well. As a threshold matter, there is no connection whatsoever between any contacts Ms. Damon may have with New York and this lawsuit. In addition, all of the alleged tortious conduct and the alleged injury occurred outside New York.

**B. The Court Does Not Have General Jurisdiction Over CNN America and CNN Productions**

The Court also does not have general jurisdiction over CNN America and CNN Productions because none of the defendants is “at home” in New York. Recently, in *Daimler AG v. Bauman*, the U.S. Supreme Court redefined the constitutional due process boundaries for general jurisdiction. 571 U.S. \_\_\_, 134 S.Ct. 746, 187 L.Ed. 2d 624 (2014). Under the Supreme Court’s new constitutional standard, a corporation will only be subject to general jurisdiction if it is “at home” in the forum state. *Id.* at 751; *see also Goodyear*, 131 S.Ct. at 2851. To be “at home” in the forum state, absent exceptional circumstances, a corporation must be either incorporated or have its principal place of business there. *Bauman*, 134 S.Ct. at 760. These two elements are the constitutional “paradigm bases for general jurisdiction.” *Id.* Simply being authorized to do business in a forum state is no longer enough to warrant the exercise of general jurisdiction over an entity. After all, “a corporation that operates in many places can scarcely be deemed ‘at home’ in all of them.” *Bauman*, 134 S.Ct. at 762 & n.20.<sup>7</sup>

Here, neither CNN America nor CNN Productions is “at home” in New York. They are not incorporated in New York, nor is their principal place of business in New York. *See* Compl. ¶¶ 2-3 (admitting that both CNN entities are “foreign corporations, duly organized under the laws of [Delaware and Georgia.]”); *Vigilante Aff.* ¶¶ 2-3. Consequently, under the Supreme Court’s new constitutional standard, CNN America and CNN Productions are not subject to this Court’s general jurisdiction.

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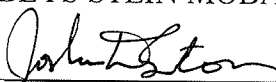
<sup>7</sup> Similarly, for an individual to be “at home” in a forum state, the state must be her “domicile, [her] home.” *Sonera Holding, B.V. v. Cukorova Holding*, 750 F.3d 221, 224 (2d Cir. 2014). Given that plaintiffs do not allege (because they cannot) that Ms. Damon is domiciled in New York, this Court lacks general jurisdiction over her as well.

**CONCLUSION**

For the reasons set forth above, CNN America and CNN Productions respectfully request that the Court enter an Order dismissing plaintiffs' Complaint as to them with prejudice.

Dated: September 4, 2014  
New York, New York

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