ALM | LAW.COM

New York Law Journal

EASTERN DISTRICT ROUNDUP

EDNY Orders on Nuisance and More

By Samuel Butt.and Thomas Kissane

March 12, 2026

Samuel Butt

Thomas Kissane

1. Public Nuisance Class Action Dismissed

In *Neuman v. Blue Jay Transit, Inc.*, 24 CV 7430 (EDNY, Feb. 10, 2026), Judge Donnelly granted defendants' motion to dismiss a class action lawsuit for public nuisance filed against several e-scooter companies and the City of New York.

After New York state legalized throttle-based bicycles and e-scooters, the New York City Council authorized the Department of Transportation to create a pilot program with selected companies operating shared e-scooter systems. Users were able to rent e-scooters by the minute. When they were done riding, they were supposed to park the scooters in designated parking corrals or furniture zones (the portion of the sidewalk where benches, bus stops, and tree pits are usually located at the edge of the sidewalk).

According to plaintiff, users did not abide by these rules and dumped scooters haphazardly across sidewalks, impeding the path for pedestrians. A DOT review found that 24 percent of inspected scooters were improperly parked with ten percent blocking pedestrian pathways.

Plaintiff alleges that while he was walking home late one evening, he tripped over two e-scooters that had been left strewn across the sidewalk. He fell, causing scrapes to his arms and hands, and twisted his ankle. He then filed a class action lawsuit in state court, which was subsequently removed to federal court under the Class Action Fairness Act. Plaintiff alleged that the e-scooter companies and the City of New York had created a public nuisance through the e-scooter program.

A public nuisance exists when there is substantial interference with a public right. When public rights are at issue, remedies generally occur through state action or lawsuits brought by

SAMUEL BUTT, *a partner at Schlam Stone & Dolan LLP, clerked for the late Charles P. Sifton, Chief Judge of the Eastern District.* THOMAS KISSANE, *a partner at Schlam Stone & Dolan, clerked for the late Charles L. Brieant, Chief Judge of the Southern District.*

Photo: Monika Kozak/ALM

U.S. District Court for the Eastern District of New York in Brooklyn.

the government. A private party, however, can sue for a public nuisance when (1) a public nuisance exists, (2) a defendant's negligent or intentional conduct or omissions created, contributed to, or maintained that nuisance, and (3) the plaintiff suffered a special injury different in kind from that suffered by the community at large as a result of the public nuisance.

> Because the e-scooter program is a product of New York state and city legislative and regulatory decisions, the legislature is the proper place to address complaints and criticisms about the program.

Plaintiff's claim failed because he "has not alleged a causal connection between the defendants' conduct and the alleged public nuisance." Slip op. 9. The claims against the City failed because there were no allegations that the City had played any direct role in causing the alleged nuisance. "Aside from alleging that the City established and reported on the pilot program, the plaintiff has not alleged that the City did anything to cause the specific nuisance about which he complains." Slip op. 10.

The claims against the e-scooter companies also failed because "plaintiff does not identify which company owned the scooters that caused him to fall, a deficiency that requires dismissal." Slip op. 11. Plaintiff's assumption that the scooters over which he tripped must have belonged to one or two of the e-scooter defendants was insufficient to hold all the companies liable, particularly when private individuals are also permitted to own e-scooters in New York. "[P]laintiff has pled no facts to connect the e-scooter defendants to the e-scooters that caused his injury." Slip op. 12.

Because the e-scooter program is a product of New York state and city legislative and regulatory decisions, the legislature is the proper place to address complaints and criticisms about the program. As plaintiff pointed out in his complaint, that process is already underway.

2. Pro Se Complaint Asserting State Law Employment Claims Preempted By Labor Management Relations Act And Barred By Res Judicata

In *Golden v. Verizon New York, Inc.*, 24 CV 6864 (EDNY, Jan. 23, 2026), Judge Azrack dismissed an employee's breach of contract claims as preempted by the Labor Management Relations Act (LMRA), 29 U.S.C. §141 et seq., and barred by res judicata.

Plaintiff Timothy J. Golden had previously sued Verizon in the Southern District of New York, alleging that Verizon's failure to accommodate his asserted disability violated the Americans with Disabilities Act, 42 U.S.C. §12112(b)(5)(A), and the New York State Human Rights Law, N.Y. Exec. Law §296.3(a). In February 2024, Southern

District Judge Ronnie Abrams dismissed that case, finding the ADA claims to be time-barred and declining to exercise supplemental jurisdiction over the state law claims. *Golden v. Verizon New York Inc.*, No. 22-CV-5757, 2024 WL 664781 (S.D.N.Y. Feb 16, 2024).

In September 2024, Golden filed suit pro se in New York State Supreme Court, Nassau County, asserting breach of contract claims against Verizon based on its purported violations of the Collective Bargaining Agreement ("CBA") with Golden's union. Verizon removed to federal court, asserting that the state law breach of contract claim presented a federal question under the LMRA, and moved to dismiss. Azrack granted the motion.

Verizon removed to federal court, asserting that the state law breach of contract claim presented a federal question under the LMRA, and moved to dismiss. Azrack granted the motion.

Golden's claims under the LMRA could not survive here because "[t]he Second Circuit has held that a breach of contract claim is preempted by Section 301 when the claim relies on alleged breaches of a collective bargaining agreement." Slip op. 6 (citing *Lane v. 1199 SEIU Healthcare Workers Lab. Union,* 694 F. App'x 819, 821 (2d Cir. 2017)). Golden's complaint "repeatedly asserts that Verizon breached the CBA when it failed to transfer him to a new role", so "[d]eciding if Verizon breached the CBA clearly requires interpreting the CBA, not merely referring to it." Id.

Golden's claims were also barred by res judicata, which applies where "'(1) the previous action involved an adjudication on the merits; (2) the previous action involved the plaintiffs or those in privity with them; [and] (3) the claims asserted in the subsequent action were, or could have been, raised in the prior action.'" Slip op. 8 (internal citation omitted.) All three factors were satisfied.

Judge Abrams' dismissal "did not specifically state that it was without prejudice." It therefore was with prejudice under Fed. R. Civ. P. 41(b) and Second Circuit precedent holding that "'a dismissal for failure to comply with the statute of limitations will operate as an adjudication on the merits, unless it is specifically stated to be without prejudice.'" The parties in the two actions were identical, and "[a]lthough Golden now asserts a new claim—that Verizon, in failing to accommodate his disability restrictions, breached its contractual obligations in the CBAs with the Communications Workers of America -- the 'nucleus of operative fact' is the same in both actions." Slip op. 10 (internal citation omitted.)

Given Golden's pro se status, Azrack read the complaint generously as asserting a claim under the Rehabilitation Act, 29 U.S.C. §793(a) (Section 503), which requires employers to "take affirmative action to employ and advance in employment qualified individuals with disabilities." Slip op. 11 (quoting statute). But Section 503 provides no private right of action, and "any federal claim under Section 503 would be barred by res judicata in any event."

3. Fair Credit Reporting Act Claim Dismissed

In *Silver v. Top Line Reporting, Inc.*, 25 CV 4375 (EDNY, Jan. 28, 2026), Judge Cogan dismissed plaintiff's Fair Credit Reporting Act (FCRA), 15 U.S.C. §1681s-2(b), claim pursuant to Fed. R. Civ. P. 12(c).

Plaintiff's former landlord claimed plaintiff owed it ever changing amounts of money, a debt that plaintiff disputed. The landlord retained defendant Top Line Reporting, Inc. (Top Line) to collect the alleged debt. Top Line reported the alleged debt to Trans Union, the credit rating agency, in the amount of $3,820, which was not an amount the landlord had ever claimed plaintiff owed. Plaintiff disputed the debt with Trans Union to no avail.

She thus brought her FCRA claim alleging that inaccurate derogatory information listed on her consumer reports as a result of Top Line and Trans Union's conduct caused her emotional distress, reputational damage, expenditure of time and resources, annoyance, aggravation, and frustration; adversely impacted her credit rating; and caused the denial of her application for an Apple credit card.

The FCRA requires that a "furnisher," which is an entity that reports credit information about consumers to credit reporting agencies, conduct an investigation if it receives notice of a dispute with regard to the completeness or accuracy of any information provided to a consumer reporting agency. Slip op. 5. Accuracy is an essential element of a claim for violation of §1681s-2(b) of the FCRA, and thus a plaintiff must plead a cognizable inaccuracy, i.e., an inaccuracy that is "objectively and readily verifiable." Slip op. 6.

Top Line argued, and the court agreed, that plaintiff failed to allege "an objectively and readily verifiable inaccuracy." Cogan had previously dismissed the FCRA claim against Trans Union, concluding that the inaccuracy was not objectively and readily verifiable because the only way Trans Union could have verified plaintiff's claim was to insert itself into plaintiff's dispute with her landlord, which the FCRA does not require it to do. This conclusion was law of the case, and Cogan thus rejected plaintiff's argument that she had alleged an "objectively and readily verifiable inaccuracy" as to Top Line. Slip op. 5-6 (citing Silver v. Top Line Reporting, Inc., No. 25-cv-4375, 2025 WL 2959055, at *3 (E.D.N.Y. Oct. 16, 2025)).

Cogan then explored whether an alleged inaccuracy need be objectively and readily verifiable to be actionable against a furnisher, such as Top Line. As Cogan noted, although furnishers may be better positioned to investigate certain disputes than credit reporting agencies, "absent clear directive from the Second Circuit, this Court is not going to hold that furnishers are required to investigate inaccuracies which are not objectively and readily verifiable." Slip op. 7.

Accordingly, the court dismissed plaintiff's FCRA claim.

Samuel Butt, *a partner at Schlam Stone & Dolan LLP, clerked for the late Charles P. Sifton, Chief Judge of the Eastern District.* **Thomas Kissane**, *a partner at Schlam Stone & Dolan, clerked for the late Charles L. Brieant, Chief Judge of the Southern District.*