

STATE OF NORTH CAROLINA  
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
20 CVS 94

AALIYAH PALMER,

Plaintiff,

v.

NICHOLAS SAVOY; JEFFREY  
CREECH; JOHN CHRISTOPHER  
NAGY II; SAMUEL MAZARIEGOS;  
ANTHONY JOHNSON; SNAP, INC.;  
MATCH GROUP, INC.; and MATCH  
GROUP, LLC,

Defendants.

**ORDER ON DESIGNATION**

1. **THIS MATTER** is before the Court on Plaintiff's Opposition to Designation of Action as a Mandatory Complex Business Case ("Opposition"). (Pl.'s Opp'n Designation Mandatory Complex Business Case & Mot. Transfer Wake County Superior Ct. ("Opp'n Mot."), ECF No. 23.) Having considered the Notice of Designation, Plaintiff's Complaint, the arguments of counsel in support of and in opposition to designation as set forth in the Opposition and in Defendants' responses, the Court **ALLOWS** the Opposition for the reasons set forth below.

I.

**BACKGROUND**

2. This case arises out of the alleged sexual assault and harassment of Plaintiff Aaliyah Palmer ("Plaintiff") by Defendants Nicholas Savoy ("Savoy"), Jeffrey Creech, John Christopher Nagy II, Samuel Mazariegos, and Anthony Johnson (collectively, the "Individual Defendants"), whom she asserts she met through the social media

application Tinder, owned by Defendants Match Group, Inc. and Match Group, LLC (the “Match Defendants”).<sup>1</sup> (Compl. ¶ 17, ECF No. 3.) The Individual Defendants are alleged to have filmed and distributed images of Savoy sexually assaulting Plaintiff through the social media application, Snapchat, which is owned and operated by Defendant Snap, Inc. (“Snap”) (together with the Match Defendants, the “Social Media Defendants”). (See, e.g., Compl. ¶¶ 43, 47, 50.)

3. Plaintiff alleges that at the time of the alleged assault, North Carolina’s rape laws frustrated her attempts to pursue criminal prosecution of Savoy but that all other Individual Defendants were arrested and charged with crimes related to the alleged assault. (See Compl. ¶ 55.) Plaintiff now brings this civil action against the Individual Defendants to recover in tort for the personal injuries she alleges she has suffered as a result of the alleged assault. She also sues Snap to hold it “accountable for [allegedly] encouraging and causing the production and distribution of images and videos of her violent sexual assault for its own commercial profit and gain, by and through the sale of advertisements that accompany such graphic sexual violence on its platform,” (Compl. ¶ 8), and the Match Defendants for allegedly “destroying evidence of her sexual assault case, and for endangering women through the manner in which it conducts business” through its Tinder application, (Compl. ¶ 9).

4. Plaintiff initiated this action on January 9, 2020, asserting claims against the Individual Defendants for (1) assault and battery, (2) false imprisonment, (3)

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<sup>1</sup> At time of this Order, the Match Defendants have a pending motion to dismiss Plaintiff’s claims against Match Group, Inc., arguing that Match Group, Inc. does not own or operate Tinder. (Mot. Dismiss Failure State Claim ¶ 3, ECF No. 7.)

intentional infliction of emotional distress, (4) intrusion upon seclusion, and (5) civil conspiracy; against Snap for (6) misappropriation of Plaintiff's name or likeness, and (7) intrusion upon seclusion; and against the Social Media Defendants for (8) negligence and gross negligence, (9) product liability—defect in design, (10) product liability—defect in manufacture, (11) product liability—defect in warning, (12) unfair and deceptive trade practices in violation of section 75-1.1, *et seq.*, and (13) negligent infliction of emotional distress.

5. The Match Defendants timely filed a Notice of Designation on February 14, 2020, (Notice Designation (“NOD”), ECF No. 4), contending that designation as a mandatory complex business case is proper under section 7A-45.4(a)(5) because “Plaintiff’s allegations and legal claims against the Match Defendants focus entirely on the ‘use’ and ‘performance’ of the Tinder software application and, more specifically, how that application preserves and secures users’ personal data[,]” (NOD ¶ 9).

6. This case was designated as a mandatory complex business case by the Chief Justice of the Supreme Court of North Carolina on February 17, 2020, (Designation Order, ECF No. 1), and assigned by the undersigned to the Honorable James L. Gale on the same day, (Assignment Order, ECF No. 2).

7. Plaintiff timely filed the Opposition on March 9, 2020, contending that designation as a mandatory complex business case is not proper because this action does not meet the requirements of section 7A-45.4(a)(5), (*see* Mem. L. Supp. Pl.’s Opp’n Designation Action Mandatory Complex Business Case 12–16 (“Br. Supp.

Opp'n”), ECF No. 24), and that, even if it did, the action is one for personal injury excluded from designation under section 7A-45.4(h), (Opp'n Mot. ¶¶ 4–5; Br. Supp. Opp'n 9–12).

8. The Match Defendants responded to the Opposition on March 31, 2020, (Match Defs.' Resp. Opp'n Business Ct. Designation (“Match's Resp.”), ECF No. 30), and Snap responded on April 1, 2020, (Snap Inc.'s Resp. Opp'n Business Ct. Designation, ECF No. 31). This matter is now ripe for determination.

## II.

### ANALYSIS

9. The Court assumes without deciding for purposes of this Order that the case is properly designated under section 7A-45.4(a)(5) and thus turns to Plaintiff's contentions concerning section 7A-45.4(h).

10. Section 7A-45.4(h) creates a carveout for cases that may otherwise be suitable for designation under sections 7A-45.4(a)–(b) and specifically provides that “[n]othing in this section is intended to permit actions for personal injury grounded in tort to be designated as mandatory complex business cases[.]”

11. Plaintiff contends that this action is subject to the carveout in section 7A-45.4(h) because her claims, including the three products liability claims she asserts against the Match Defendants, are grounded in tort and seek damages for alleged personal injury. The Court agrees.

12. Although the parties spill considerable ink disputing whether and to what extent the dicta in this Court's decision in *Cardioventis AG v. IQVIA Ltd.*, 2018 NCBC

LEXIS 64, at \*6 (N.C. Super. Ct. June 27, 2018) (noting simply that “the legislature expressly stated that designation does not extend to ‘actions for personal injury grounded in tort,’ which would include pharmaceutical products liability cases”) controls designation here, (*see, e.g.*, Br. Supp. Opp’n 11; Match’s Resp. 9–10), the relevant inquiry under section 7A-45.4(h) is whether the action at issue is one for “personal injury grounded in tort.” As our Supreme Court has observed, “[t]he term personal injury has a wide range of meanings. . . . [P]ersonal injury could be defined as either: ‘[A]ny harm caused to a person, such as a broken bone, a cut, or a bruise; bodily injury,’ or ‘[a]ny invasion of a personal right, including mental suffering and false imprisonment.’” *Misenheimer v. Burris*, 360 N.C. 620, 623, 637 S.E.2d 173, 175 (2006) (quoting *Black’s Law Dictionary* 802 (8th ed. 2004)).

13. As pleaded here, the gravamen of Plaintiff’s action, and, in particular, her claims against the Individual Defendants for assault and battery, false imprisonment, intentional infliction of emotional distress, and intrusion upon seclusion; against Snap for misappropriation of Plaintiff’s name or likeness, and intrusion upon seclusion, and against the Social Media Defendants for negligence and gross negligence, product liability, and negligent infliction of emotional distress, (*see* Compl. ¶¶ 170, 179, 188, 194), sound in tort and seek recovery for alleged personal injury, *see Misenheimer*, 360 N.C. at 623, 637 S.E.2d at 175 (“[T]he mind is no less a part of the person than the body, and the sufferings of the former are sometimes more acute and lasting than those of the latter.” (quoting *Young v. W. Union Tel. Co.*, 107 N.C. 370, 385, 11 S.E. 1044, 1048 (1890))); *see also* N.C.G.S. § 99B-1(3) (“ ‘Product

liability action' includes any action brought for or on account of personal injury . . . caused by or resulting from the manufacture, . . . design, formulation, development of standards, . . . warning, . . . marketing, selling, [or] advertising . . . of any product”); *State v. Baker*, 336 N.C. 58, 62, 441 S.E.2d 551, 553 (1994) (stating that, for first-degree rape charge, the element of “ ‘serious personal injury’ c[an] be established based solely upon the existence of mental and emotional injury”); *Guthrie v. Conroy*, 152 N.C. App. 15, 20, 567 S.E.2d 403, 407 (2002) (stating that negligent and intentional infliction of emotional distress claims are “common law tort claims for personal injury”). As such, the Court concludes that designation as a mandatory complex business case is prohibited by section 7A-45.4(h).

14. **WHEREFORE**, the Court concludes, that this action is excepted from mandatory complex business case designation under section 7A-45.4(h), and the Opposition is therefore **ALLOWED**. This action should proceed on the civil docket of the Wake County Superior Court. The Court’s ruling is without prejudice to the right of any party to seek designation under Rule 2.1 and any party other than the Match Defendants, if timely, to seek designation of this matter as a mandatory complex business case as provided under section 7A-45.4.

**SO ORDERED**, this the 27th day of April, 2020.

/s/ Louis A. Bledsoe, III  
Louis A. Bledsoe, III  
Chief Business Court Judge