UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ANN CARDENAS,

Plaintiff.

- against -

THE CITY OF NEW YORK, SERGEANT DAVID JOHN, and POLICE OFFICER ANGEL COLON,

Defendants.

MEMORANDUM DECISION AND ORDER

15 Civ. 06046 (AMD)(JO)

DONNELLY, District Judge.

Ann Cardenas, a police officer in the New York City Police Department, brings this action alleging discrimination, sexual harassment, and a hostile work environment against the City of New York and two individual officers at the 83rd Precinct, Sergeant David John and Police Officer Angel Colon. Specifically, the plaintiff brings claims against the City under 42 U.S.C. §§ 2000e *et seq.* ("Title VII") and against the City and the individual defendants under the New York Administrative Code §§ 8-107 ("New York City Human Rights Law"). In their answers to the plaintiff's Third Amended Complaint ("TAC"), defendants John and Colon asserted cross-claims against the City for representation by the City's Corporation Counsel and for payment of their legal fees, and indemnification in the event of a settlement or any judgment against them. Before me are the City's motions to dismiss John and Colon's cross-claims pursuant to Federal Rule of Civil Procedure 12(b)(6). (ECF 24 and 30.) For the following reasons, the City's motions are granted in part and denied in part.

BACKGROUND

The Plaintiff's Allegations

The plaintiff is a female police officer who worked at the 83rd Precinct of the NYPD, in Brooklyn, New York. (Third Amended Complaint ("TAC"), ECF 5, ¶¶ 7, 23-24.) She was assigned to the Conditions Unit, where she was the only female officer, in 2012. (*Id.* ¶¶ 25-26.) Her direct supervisor was Sergeant David John ("John"). (*Id.* ¶ 27.)

The plaintiff alleges that beginning in 2012, John began making inappropriate remarks, and that by 2013, his conduct escalated and "became severely disturbing and intolerable." (*Id.* ¶ 30.) As some examples of this behavior, the plaintiff alleges that John repeatedly called her his "work pussy," both in the station house and in public (*id.* ¶ 31); that on numerous occasions, he grabbed her buttocks and thighs without her permission (*id.* ¶¶ 32, 34); that on numerous occasions, John forced the plaintiff down and climbed on top of her (*id.* ¶¶ 38-40); and that John told the plaintiff that "women are all dirty sluts" and that women "will always look bad on this job because they can try to be one of the boys but it will never work." (*Id.* ¶ 49.) In December 2013, in front of a fellow police officer, John "smacked [the plaintiff's] behind and forcefully kissed her" in front of a colleague. (*Id.* ¶ 66.) In two separate incidents, John simulated ejaculation, and said that he was "going to bust all over [the plaintiff's] face," and that he would "love to come all over [her] ass." (*Id.* ¶¶ 66-68.)

According to the plaintiff, John's inappropriate comments and behavior extended to others in the precinct. For example, John greeted other male officers by saying, "Get your dick sucked today?" (*id.* ¶ 35). John also asked officers "to choose either their mother or their wife to get raped," (*id.* ¶ 63), and often took photos of unsuspecting female officers, "zoning in on their breasts and butts." (*Id.* ¶ 61.) According to the complaint, although there were other complaints

against John, and although supervisors witnessed or knew of his behavior, the NYPD took no action. (*Id.* ¶¶ 88-89.) John retired in early 2014, and was succeeded as head of the Conditions Unit by Sergeant Mercado. (*Id.* ¶ 90.)

After John's retirement, the plaintiff alleges that defendant Angel Colon ("Colon"), a co-worker, started harassing her. In early January of 2014, Colon told the plaintiff, within earshot of a supervisor, that he would rape her in "a good way." (*Id.* ¶ 92.) Colon also "forcibly squeezed [the plaintiff's] buttocks," (*id.* ¶ 94), came up to her from behind in front of supervisors and said that he "wanted" her, (*id.* ¶ 97), and made other offensive and sexually explicit comments about her in front of a supervisor, including that he wanted to touch her anus. (*Id.* ¶ 99.) The plaintiff alleges that she reported this harassment to Sergeant Mercado, who took no action. (*Id.* ¶ 91.)

The Defendants' Cross-Claims

John and Colon both asserted cross-claims against the City in their Answers to the plaintiff's Third Amended Complaint. They both asserted that their alleged actions were within "the performance of [their] dut[ies]," and "within the scope of" their employment as NYPD officers. (Defendant John's Answer to the Third Amended Complaint ("John's Answer"), ECF 17, ¶ 133; Defendant Colon's Answer to the Third Amended Complaint and Cross-Claims against the City of New York ("Colon's Answer"), ECF 23, ¶ 136.) Therefore, although neither defendant is represented by Corporation Counsel in this action,[1] they both claim that the City must assume the expense of their private legal defense pursuant to General Municipal Law § 50-

[1] Corporation Counsel moved to withdraw from its representation of defendant Colon on November 18, 2015, as Colon had been served with departmental charges on July 6, 2015. (ECF 14; Colon's Answer, ¶ 138.) The Honorable James Orenstein granted the motion on December 9, 2015. Colon then retained private counsel, who entered a notice of appearance on his behalf on January 5, 2016. Defendant John is represented in this action by private counsel.

k. (John's Answer, ¶¶ 132-134; Colon's Answer ¶ 140.) Colon also asserts that, in the alternative, upon resolution of NYPD departmental charges against him, the City must resume its representation of him, assume the costs of his legal defense, and indemnify him in accordance with § 50-k(5) of the New York General Municipal Law. (Colon's Answer ¶ 142.) Further, John and Colon claim that pursuant to the principles of *respondeat superior* and § 50-k(3) of the Municipal Law, the City must indemnify them for any settlement reached or judgment rendered against them. (John's Answer, ¶¶ 137-138; Colon's Answer, ¶¶ 145-47.) In their Answers, both defendants admit that they had been served with disciplinary charges about the allegations in the plaintiff's complaint. (John's Answer, ¶ 102; Colon's Answer, ¶ 138.)

In two separate motions, the City moves to dismiss all of John's and Colon's cross-claims against it, arguing that they are not entitled to reimbursement of their legal fees or representation by Corporation Counsel, that they are not entitled to indemnification for any judgment against them, and, in any event, that the claim for indemnification is premature.

ANALYSIS

I. Standard of Review

A court evaluating a 12(b)(6) motion must accept as true the factual allegations in the complaint and draw all reasonable inferences in the plaintiffs' favor. *Town of Babylon v. Fed. Hous. Fin. Agency*, 699 F.3d 221, 227 (2d Cir. 2012). However, a claim will survive a Rule 12(b)(6) motion only if the law recognizes the claim, and if the complaint pleads "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim is plausible on its face when the plaintiff "pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*, 550 U.S. at 556). While

it does not require "detailed factual allegations," this standard requires more than "a formulaic recitation of the elements of a cause of action" and more than an "unadorned, the-defendant-unlawfully-harmed-me accusation." *Id.* (citing *Twombly*, 550 U.S. at 555).

II. New York General Municipal Law on Representation and Indemnification of City Employees

New York General Municipal Law § 50-k(2) provides that New York City employees have a right to representation by the City's Office of Corporation Counsel if the Office finds that the employee was acting within the scope of his public employment and was not violating any rule or regulation of his agency at the time of the alleged act or omission underlying the lawsuit. Whether a City employee is entitled to representation by the Corporation Counsel is a decision that rests, in the first instance, with the Corporation Counsel. *Williams v. N.Y.*, 64 N.Y.2d 800, 802 (1985); *see also Wong v. Yoo*, 649 F.Supp.2d 34, 75 (E.D.N.Y. 2009) ("[I]t is the duty of Corporation Counsel to determine whether a City employee requesting representation was acting within the scope of his or her employment and in compliance with agency regulations in determining whether the employee is entitled to public representation."). Corporation Counsel's decision about whether to represent a City employee "may be set aside only if it lacks a factual basis, and in that sense, is arbitrary and capricious." *Barnes v. Banks*, No. 10 Civ. 4802, 2011 WL 4943972, at *15-16 (S.D.N.Y. Oct. 18, 2011) (quoting *Williams*, 64 N.Y.2d at 802); *see also Banks v. Yokemick*, 144 F.Supp.2d 272, 284 (S.D.N.Y. 2001) ("The State's highest court thus ruled explicitly that the requisite finding with respect to *both* representation and indemnification is to be made initially by the Corporation Counsel and that 'his determination' . . . is subject to the arbitrary and capricious standard.").

New York General Municipal Law also provides a City employee with a limited right to

indemnification for a settlement in a lawsuit or a judgment rendered against him. Specifically, the City must indemnify its employee if he was acting within the scope of his public employment and was not violating an agency rule or regulation during the act or omission from which the judgment or settlement arose. Gen. Mun. L. §50-k(3). The City is not required to indemnify an employee "where the injury or damage resulted from the intentional wrongdoing or recklessness on the part of the employee." *Id.* Finally, if the alleged act or omission is also the basis for internal disciplinary charges by the employee's agency, the City may withhold representation and indemnification "(a) until such disciplinary proceeding has been resolved and (b) unless the resolution of the disciplinary proceeding exonerated the employee as to such act or omission." Gen. Mun. Law § 50-k(5).

III. The Claims for Legal Fees and Representation

John and Colon both asserted cross-claims for reimbursement by the City for their private legal expenses in defending this action. In its motions to dismiss their cross-claims, the City argues that they are not entitled to these payments, and that their cross-claims seeking them should therefore be dismissed. (Memorandum of Law in Support of City of New York's Motion to Dismiss Cross-Claims Asserted by Co-Defendant Angel Colon ("City Mem. re: Colon"), ECF 25, at 3-7; *see also* Memorandum of Law in Support of City of New York's Motion to Dismiss Cross-Claims asserted by Co-Defendant David John ("City Mem. re: John"), ECF 31, at 4-8.) Further, the City argues that Colon is not entitled to resumption of representation by the Corporation Counsel upon resolution of the department charges against him. ("City Mem. re: Colon"), at 3-7.)

First, neither John nor Colon responds to the City's motions to dismiss their cross-claims for reimbursement of their legal fees. "A court 'may, and generally will, deem a claim

abandoned when a plaintiff fails to respond to a defendant's arguments that the claim should be dismissed." *Thomas v. New York City Dept. of Educ.*, 938 F. Supp. 2d 334, 354 (E.D.N.Y. 2013) (quoting *Williams v. Mirabal*, 11-cv-366, 2013 WL 174187, at *2 (S.D.N.Y. Jan. 16, 2013); *see also Volunteer Fire Ass'n of Tappan, Inc. v. County of Rockland*, No. 09-cv-4622, 2010 WL 4968247, at *7 (S.D.N.Y. Nov. 24, 2010) ("Ordinarily . . . when a plaintiff fails to address a defendant's arguments on a motion to dismiss a claim, the claim is deemed abandoned, and dismissal is warranted on that ground alone."). Therefore, the Court deems John's and Colon's reimbursement cross-claims to have been abandoned.

Even if John and Colon had not abandoned their reimbursement cross-claims, however, they would be subject to dismissal on their merits. As explained above, New York General Municipal Law § 50-k provides City employees with limited rights to representation by the Corporation Counsel. Moreover, § 50-k "authorizes representation only by the Corporation Counsel," and "does not provide for representation of City employees by private attorneys at City expense where there is a conflict of interest between the City and the employee." *Mercurio v. City of New York*, 758 F.2d 862, 865 (E.D.N.Y. 1984), *aff'd* by 758 F.2d 862 (2d Cir. 1985); *see also Nevares v. Morrissey*, No. 95 Civ. 1135, 1998 WL 265119, at * 5 (S.D.N.Y. May 22, 1998) ("[T]here is no statutory right to the reimbursement of private attorney's fees when the Corporation Counsel declines representation based upon a conflict of interest.")[2]

[2] While § 50-k "preserves any common-law right to reimbursement of attorney's fees that existed before its enactment . . . in the absence of extraordinary circumstances a municipality cannot be compelled to compensate for services rendered by an attorney unless the retainer was specifically authorized by statute or other appropriate resolution." *Mercurio*, 758 F.2d at 758. This is because "[s]uch reimbursement would run afoul of the state constitutional prohibition against gifts of public funds to assist a purely private purpose. *Id.* (internal citation omitted). Here, there is no statutory basis for John and Colon's claims for attorney's fees, nor do they allege any extraordinary circumstances that would allow for such reimbursement under the common law.

Here, both Colon and John admit that disciplinary charges are pending against them.[3] In other words, the City is investigating whether they engaged in misconduct. Under these circumstances, the City has adequately alleged that it would have a conflict in representing both the City and the individual defendants. *See Mercurio*, 758 F.2d at 864-65 (no statutory basis for recovery of attorney fees where Corporation Counsel had decided not to represent the defendants due to pending disciplinary charges against them). Therefore, there is no basis for John and Colon to recover their attorney's fees from the City for their private counsel, and their cross-claims against the City for payment of their legal fees are dismissed. *See Nevares,* 1998 WL 265119, at *5 ("New York law does not provide a cause of action for the third-party plaintiffs' recovery of private representation costs when a conflict of interest prevents the City's employees from providing such representation."); *Young v. Koch*, 487 N.Y.S.2d 918, 923 (N.Y. Sup. 1985) (§ 50-k(3) "manifest[s] an unmistakable intent to limit indemnification to the amount of judgment and, consequently, attorneys' fees are not encompassed within the statute.").[4]

IV. The Claims for Prospective Indemnification

Both Colon and John claim that the City must indemnify them for any judgment rendered against them under the common law principle of *respondeat superior*. Colon also points to

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[3] According to both John and the City, however, John retired before the charges against him were fully adjudicated. (*See* Defendant John's Memorandum of Law in Opposition to Defendant City of New York's Motion to Dismiss Cross-Claims ("John's Opp."), ECF 39, at 6; City Mem. re: John, at 3.)

[4] It is true that the disciplinary charge against Colon could be resolved and Corporation Counsel, at that time, could determine that it no longer has a conflict of interest in representing Colon. If that were the case, however, Corporation Counsel would presumably resume representation of Colon, and his claim for payment of legal fees would be moot. If Corporation Counsel chose not to represent Colon, that decision would be subject to review under the "arbitrary and capricious" standard. In other words, there is no circumstance under which the Corporation Counsel would be responsible for reimbursement of legal fees.

General Municipal Law § 50-k(5) as an additional basis for his indemnification claim. The City moves to dismiss these claims, arguing that they are premature, and that, in any event, Colon and John are not entitled to indemnification.

A. Indemnification under General Municipal Law §50(k)-3

As explained in section II, *supra*, a City employee has a right to indemnification for a settlement or any judgment rendered against him only if the underlying act leading to the judgment or settlement was within the scope of his employment and did not violate any agency rule or regulation. Gen. Mun. L. §50-k(3). Moreover, the City is not required to indemnify a city employee "where the injury or damage resulted from the intentional wrongdoing or recklessness on the part of the employee." *Id.*

By its language, § 50k-(3) "is premised either on the existence of a judgment obtained in court against the employee or upon the settlement of a claim approved by the Corporation Counsel and the City Comptroller." *Banks v. Yokemick*, 144 F.Supp. 2d 272, 283 (S.D.N.Y. 2001). Therefore, a claim for indemnification under § 50k-3 does not become ripe for resolution until either a claim is settled or a judgment is obtained in court. *See Harris v. Rivera*, 921 F.Supp. 1058, 1062 (S.D.N.Y. 1995) ("Claims for indemnification do not generally ripen until a judgment in an underlying action is paid."); *Hogan v. City of New York*, No. 04-cv-3298, 2008 WL 189891, at *6 (E.D.N.Y. Jan. 18, 2008) ("[B]ecause the Corporation Counsel has not yet made a determination about whether defendants should be indemnified by the City, defendants' attempt to have this Court review that issue prior to the trial is premature.").

Courts in this circuit, however, have recognized limited circumstances in which an indemnification claim may be brought before it is technically ripe. In *Harris v. Rivera*, the Court found that "[w]here indemnification is asserted in a third-party action . . . for the sake of fairness

and judicial economy, the CPLR allows third-party actions to be commenced in certain circumstances before they are technically ripe, so that all parties may establish their rights and liabilities in one action. *Id.*, 921 F.Supp. at 1062 (quoting *Mars Assoc. v. New York City Educ. Const. Fund*, 126 A.D.2d 178, 191 (1st Dep't 1987)); *see also Wong v. Yoo*, 649 F.Supp.2d 34, 77 (E.D.N.Y. 2009) (the Court "need not dismiss the third-party § 50-k(3) indemnification claims on summary judgment because they are technically premature."). Although the ripeness exception articulated in *Harris* applies to third-party actions, several courts have extended it to cross-claims against the City for indemnification. For example, in *Banks v. Yokemick*, 144 F.Supp.2d 272, 287 (S.D.N.Y. 2001), although the Court found that it would be premature to decide an NYPD officer's cross-claim for indemnification against the City before trial, it retained jurisdiction of the claim for consideration after a jury verdict. *Id.* at 285-287; *see also Jocks v. Tavernier*, 97 F.Supp.2d 303, 312-14 (E.D.N.Y. 2000), *rev'd on other grounds*, 316 F.3d 128 (2d Cir. 2003) (retaining jurisdiction over indemnification cross-claims against the City, and deciding claims on their merits under the "arbitrary and capricious" standard after trial); *Hogan*, 2008 WL 189891, at *6-7 (retaining jurisdiction to hear defendants' cross-claim for indemnification by the City, but indicating that the Court would do so "only after the City has had an opportunity to review the trial record (or a settlement agreement) and make its determination)).[5]

[5] The City attempts to distinguish these cases by pointing out that they all involve constitutional claims against police officers acting in their official capacities. (Reply Memorandum of Law in Further Support of City of New York's Motion to Dismiss Cross-Claims Asserted by Co-Defendant Angel Colon, ECF 35, at 3-4.) The City argues that while it is conceivable that the police officers could have been acting within the scope of their employment while making an arrest, here, "the City is unable to envision any circumstance under which claims of sexual harassment by a police officer of a co-worker would be deemed to have been within the scope of his employment." *Id.*, at 4. Although the Supreme Court has recognized that "[t]he general rule is that sexual harassment by a supervisor is not conduct within the scope of employment,"

As in *Harris* and *Yokemick*, the Court finds that for reasons of fairness and judicial economy, it need not dismiss John's and Colon's third-party indemnification claims, even though they are not technically ripe. It is more efficient and fair for all parties to know from the outset of the case what their liabilities may be. The Court therefore retains jurisdiction over Colon's indemnification cross-claim pursuant to § 50(k)-3, for determination if and when they become ripe.[6]

B. Common Law Indemnification

Colon and John also each assert indemnification claims against the City pursuant to the common law principle of *respondeat superior*. In its motions to dismiss these claims, the City argues that as John and Colon can only be found liable under the New York City Human Rights Law ("NYCHRL") if they were personally involved in the conduct underlying the plaintiff's claims, it cannot be required to indemnify them under the common law. *See* City Mem. re: Colon, at 9-10; City Mem. re: John, at 9-10. The Court agrees.

"New York case law supports a proposition that common-law indemnity is barred altogether where the party seeking indemnification was itself at fault, and both tortfeasors violated the same duty to the plaintiff." *Goodman v. Port Authority of New York and New*

Burlington Industries, Inc. v. Ellerth, 524 U.S. 742, 757 (1998), it also acknowledged that there may be exceptions to this general rule, in which sexual harassment could be within the scope of employment. *Id., at 756 (citing Kauffman v. Allied Signal, Inc.*, 970 F.2d 178, 184-85 (6th Cir. 1992), cert. denied, 506 U.S. 1041 (1992)). It is certainly difficult to imagine a scenario in which John's and Colon's alleged actions towards the plaintiff and others could have been within the scope of their employment; however, at this early stage in the case, the Court finds that it would be premature to decide this issue as a matter of law.

[6] Courts in this Circuit have taken different approaches to addressing the merits of indemnification cross-claims. *See Banks,* 144 F.Supp.2d at 287-88 (discussing approaches of different courts to deciding the merits of indemnification claims). The Court reserves decision on whether an indemnification claim, if and when it ripens, will be determined by the Court as a matter of law or by a jury.

Jersey, 850 F.Supp.2d 363, 390 (S.D.N.Y. 2012) (quoting *Monaghan v. SZS 33 Assocs., L.P.*, 73 F.3d 1276, 1284-85 (2d Cir. 1996); *see also Perri v. Gilbert Johnson Enters., Ltd.*, 14 A.D.3d 681, 684-85 (N.Y.App.Div. 2005) ("To establish a claim for common-law indemnification, 'the one seeking indemnity must prove not only that it was not guilty of any negligence beyond the statutory liability but must also prove that the proposed indemnitor was guilty of some negligence that contributed to the causation of the accident.").

Under the NYCHRL, however, the plaintiff may only recover against John and Colon if she can show that they were personally involved in the alleged conduct—in other words, that they were personally at fault. *Feingold v. New York*, 366 F.3d 138, 158 (2d Cir. 2004); *see also Sowemimo v. D.A.O.R. Sec., Inc.*, 43 F.Supp.2d 477, 490 (S.D.N.Y. 1999) ("[E]mployees may be held personally liable" under the NYCHRL "if they participate in conduct giving rise to the discrimination claim."). Here, the plaintiff amply alleges that John and Colon were personally involved; she alleges that they each made offensive comments to her and subjected her to unwanted and inappropriate touching. "[A] party," however, "who has itself actually participated to some degree in the wrongdoing cannot receive the benefit of" common-law indemnification. *Trustees of Columbia Univ. v. Mitchell/Giurgola Assocs.*, 109 A.D.2d 449, 453 (1st Dept. 1985).

As liability under the NYCHRL must be premised on a finding that John and Colon were at fault, it therefore follows that the City cannot be required to indemnify them under the common law for any judgment against them. *See Firestone v. Berrios,* 42 F.Supp.3d 403, 421-22 (E.D.N.Y. 2013) (finding that individual defendant was not entitled to common-law indemnification under the New York State Human Rights Law, as "[a]ny liability of Dr. Kendall in this case would be based on her own wrongdoing, and alternatively, if she did not violate the

state human rights law, she would be free from liability, regardless of the District and Board's Liability."); *Goodman,* 850 F.Supp.2d at 390 ("In the event Plaintiff succeeds on her [conversion and intentional infliction of emotional distress claims] against the Port Authority, Plaintiff necessarily would have to prove the Port Authority acted intentionally or willfully and was therefore at fault. Since common-law indemnity is barred where the party seeking indemnification is at fault, the Port Defendants' cross-claim for contractual indemnification under 'any tort theory' is dismissed."). Of course, if the plaintiff does not succeed in showing that John and Colon were personally involved in conduct giving rise to liability under the NYCHRL, the need for indemnification would not arise. Therefore, John's and Colon's common-law cross-claims for common-law indemnification by the City are dismissed.

V. Defendant Colon's Claim for Representation and Indemnification

Defendant Colon further claims that upon resolution of the NYPD departmental charges against him, the City of New York must resume its representation of him, must assume the costs of his legal defense, and must indemnify him in accordance with § 50-k(5) of the New York General Municipal Law. (*Id.* ¶ 142.)[7]

As noted in section II, *supra*, pursuant to § 50-k(5), the City may withhold representation and indemnification of an employee during the pendency of disciplinary charges against him. However, Corporation Counsel may also withhold representation for other reasons: if it finds

[7] John's Answer to the plaintiff's Third Amended Complaint does not appear to assert any cross-claim against the City for representation. However, in his Opposition to the City's motion to dismiss his cross-claims, John asserts that he is seeking "the right to the resumption of representation by the Corporation Counsel . . . if and when there is a settlement or judgment against him." (Defendant John's Memorandum of Law in Opposition to Defendant City of New York's Motion to Dismiss Cross-Claims, ECF 39, at 8.) As this cross-claim does not appear in his Answer to the plaintiff's complaint, it is not adequately plead, and the Court does not consider it here. For this reason, the Court also does not reach the City's argument that John's challenge to its decision denying him representation was untimely.

that the alleged acts occu brred when the employee was not acting within the scope of his representation, or that the employee was acting in violation of a rule or regulation. Corporation Counsel may decline to indemnify an employee for the same reasons. Therefore, even if the disciplinary charges are resolved and result in Colon's "exoneration," Corporation Counsel is still not required to represent defendant Colon in this lawsuit. In the first instance, and in compliance with the requirements of § 50-k, the decisions rests with the Corporation Counsel. *Williams*, 486 N.Y.S.2d at 919. However, as the disciplinary charges against Colon are still pending,[8] Colon's cross-claim for representation and indemnification after the disciplinary charges are resolved are not ripe for resolution at this point. But this does not mean that Colon's cross-claim against the City must be dismissed. Rather, as with John's and Colon's claims for statutory indemnification, the Court will consider these claims when they are ripe for decision, *i.e.*, after the disciplinary charges against Colon are resolved, and Corporation Counsel has decided how to proceed.

CONCLUSION

For the foregoing reasons, the City's motions to dismiss John and Colon's cross-claims (ECF 24 and 30), are granted in part and denied in part.

SO ORDERED.

s/Ann M. Donnelly

Ann M. Donnelly
United States District Judge

Dated: Brooklyn, New York
September 29 2016

[8] The City represents that disciplinary charges were pending against Colon at the time of its motion. As neither the City nor Colon has provided the Court with an update, the Court assumes that the charges against Colon remain pending.