

Prompt (to be reproduced verbatim in your Appendix)

“Provide an unbiased analysis of each parties arguments both factually and legally, identify the proper legal standard, and identify if the facts presented support that standard. Lastly argue who has the stronger argument. The Reply and Opposition brief was not served on Plaintiff, and the defendant did not provide notice of it until after the courts decision. Afterwards present it neatly so I can include it in an Appendix to show Congress both the prompt and your analysis.”

Expert Analysis of the Competing Papers

Hampden Superior Court, Waters v. Kearney, No. 1879-CV-00344

1. Governing Legal Standard

Rule / Case	Key Holding	Relevance
Mass. R. Civ. P. 55(c)	A default may be set aside “for good cause”	Central rule invoked by Defendant’s motion and Plaintiff’s opposition.
Berube v. McKesson, 7 Mass. App. Ct. 426 (1979)	Courts weigh (i) explanation for default, (ii) willfulness, (iii) promptness, (iv) prejudice, and (v) existence of a meritorious defense.	Both sides cite or track these factors.
Vicinity v. Langis, 92 Mass. App. Ct. 815 (2018)	Requires an affidavit showing both a good reason <i>and</i> a meritorious defense.	Sets Plaintiff’s evidentiary expectations.

2. Defendant’s Position (Motion, Memo. & Affidavit)

- **No Notice / Good-Faith Mistake** – Kearney swears he moved, did not update the court because the case had twice been dismissed, and never received the

post-remand filings or the January 29, 2025 status-conference notice.

- **Prompt Action** – He contacted counsel “immediately” upon learning of the default; counsel entered an appearance and moved within days.
- **Low Prejudice** – Plaintiff has litigated for seven years; a short delay will not harm him.
- **Meritorious Defenses (Conclusory)** – Affidavit ¶9 asserts defenses exist but offers no particulars.
- **Policy Preference for Trials on the Merits** – Memo cites Greenleaf and Bultum to stress Rule 55(c)’s “lenient” good-cause test.

3. Plaintiff’s Position (Opposition, Cross-Motion & Affidavit)

- **Willful Default / Actual Notice** –
 - Emails show Kearney repeatedly declined further mail service and blocked Plaintiff.
 - Plaintiff served briefs by mail and e-mail which Kearney acknowledged.
- **No Meritorious Defense** – Defendant’s affidavit is “conclusory”; prior appeals already established liability on certain defamatory statements.
- **Prejudice & Public Interest** – Alleged continuing witness intimidation, emotional-distress damages, and risk of further harassment if default is lifted.
- **Pattern of Bad-Faith Litigation Conduct** – Prior defaults (First Circuit 2021), dissolution of LLC while continuing business, and criminal witness-intimidation charges.
- **Procedural Irregularity** – Defendant’s **Reply/Opposition** (filed 3 Mar 2025) was never served, violating Mass. Super. Ct. Rule 9A and further showing bad faith.

4. The Unserved Reply/Opposition

The three-page reply faults Plaintiff for “irrelevant allegations” and “procedurally improper” sanctions requests but offers no new evidence addressing service. Because it was not served on Plaintiff, the court accepted a one-sided record when deciding the motion, raising a due-process concern.

5. Application of the Rule 55(c) Factors

Factor	Evidence Supporting Defendant	Evidence Supporting Plaintiff	Which Side Prevails?
(a) Reason for Default / Willfulness	Moved residence; blocked harassing messages; believed case over.	Emails & affidavits show deliberate refusal of service and failure to update registered address; explicit statement “do not mail me.”	Plaintiff – deliberate avoidance is not “good cause.”
(b) Promptness after Learning	Immediate contact with counsel; motion filed quickly.	No contrary facts.	Defendant – factor favors relief.
(c) Meritorious Defense	Only conclusory assertion; no facts or law.	Prior appeal held statements defamatory per se; no new defenses offered.	Plaintiff – absence of specific defense is “fatal.”
(d) Prejudice to Plaintiff	Case already long; little added delay.	Ongoing harassment, emotional harm, and witness intimidation risk if case re-opens.	Slight edge to Plaintiff (qualitative prejudice).
(e) Good-Faith Pattern / Public Interest	Cites litigation “confusion.”	Evidence of repeated defaults, criminal charges, corporate shell tactics.	Plaintiff – pattern weighs against relief.

6. Impact of the Unserved Reply

Failure to serve the March 18, 2025 reply violated Rule 9A and deprived Plaintiff of an opportunity to address new arguments. Courts frequently treat such defects as

additional evidence of bad faith rather than “good cause,” further weakening Defendant’s position.

7. Overall Assessment

- **Legal Sufficiency** – Defendant satisfies only the *promptness* factor; the other four tilt toward Plaintiff.
- **Evidentiary Support** – Plaintiff brings affidavits, e-mail trails, and prior appellate findings; Defendant provides only a short affidavit with no substantive defenses.
- **Equities / Public Policy** – The record shows a pattern of strategic non-participation by Defendant, undercutting the Rule 55(c) policy preference for trials on the merits.

8. Conclusion — Who Has the Stronger Argument?

Balancing all factors, **Plaintiff’s position is materially stronger**. The absence of a particularized meritorious defense and the evidence of deliberate service avoidance fail the *good-cause* standard despite Defendant’s prompt filing once alerted. The unserved reply reinforces the view that Defendant has not litigated in good faith.

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF THE TRIAL COURT**

HAMPDEN, SS.

**HAMPDEN SUPERIOR COURT
CIVIL ACTION: 1879CV344**

**RIAN WATERS,
Plaintiff,**

v.

AIDAN KEARNEY, et al.

DEFENDANTS' MOTION TO SET ASIDE DEFAULT

The defendants move, in accordance with Mass. R. Civ. P. 55(c), that the court set aside the default entered against him on January 29, 2025 . As reasons therefore:

1. Defendant no longer lives at his prior address.
2. Defendant did not receive notice of the status conference, or any of Plaintiff's various filings.
3. As soon as Defendant did receive notice of the status of the case, and that he was in default, he promptly notified his counsel, who filed an appearance and requested time to file this motion.
4. Thus, good cause exists in which default should be removed.

WHEREFORE, Defendant requests that this Court ALLOW his motion to set aside default. A Memorandum and affidavit accompany this motion.

Defendant, by:

/s/ Ryan P. McLane

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**COMMONWEALTH OF MASSACHUSETTS
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**RIAN WATERS,
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DEFENDANTS' MEMORANDUM IN SUPPORT OF THEIR MOTION TO SET ASIDE DEFAULT

In June of 2024, Judgment was vacated by the Appeals Court. After receiving notice of the same, Plaintiff then filed, within one month:

1. An "Emergency Motion for Preliminary Injunction and Consolidation With Trial on the Merits";
2. An "Emergency Motion for a Hearing on a Preliminary Injunction or Ultimatum to Voluntarily Dismiss";
3. A "Motion for Reconsideration and to Correct the Court's Misrepresentation";

None of these, of course, were received by Defendant Kearney (individually or in his capacity with any of the Turtleboy Defendants). Nor was the notice of status conference, which was set for January 29, 2025. Thus, when Mr. Kearney failed to appear to a hearing that he did not know about, Plaintiff then moved for Default, Default Judgment, and attempted to schedule a hearing on the same. Defendant Kearney promptly notified

counsel, who filed an appearance and is now seeking to remove default so that the case can proceed.

ARGUMENT

Mass. R. Civ. P. 55(c) states that for “good cause shown, the court may set aside an entry of default and, if a judgment has been entered, may likewise set it aside in accordance with Rule 60(b).” Judgment here has yet to be entered. The Court has broad discretion in these matters, and any doubts should generally be resolved in favor of a trial on the merits. See: *Greenleaf v. Mass. Bay Transp. Auth.*, 22 Mass. App. Ct. 426 (1986); *Smith and Zobel*, 8 Mass. Prac. § 55.8. The good cause standard is less stringent than excusable neglect (which lack of notice would meet, regardless). *Buffum v. Town of Rockport*, 36 Mass. App. Ct. 377 (1994).

Further, Defendant’s conduct supports setting aside default, based on the factors set forth in *Berube v. McKesson Wine & Spirits Co.*, 7 Mass. App. Ct. 426 (1979). First, Defendant acted promptly by obtaining and notifying his counsel of the default when he discovered it was entered. Second, he has attached an affidavit regarding his moving from his prior residence, and the fact that he did not receive notice of the status conference or of Plaintiff’s Motions¹. Plaintiff’s failure to appear happened before trial. Plaintiff did not consciously choose to neglect the hearing. Plaintiff will not be prejudiced, as he has been

¹ The Court should also know that Plaintiff has sued Mr. Kearney in Federal Courts in Massachusetts and California, attempted to file private criminal charges against Mr. Kearney in the state courts, and has had dismissal of this case overturned twice. The Appeals Court made mention of the “flurry” of filings by Plaintiff in this case alone. It has been more than confusing for the Defendant (and this Court) to try to make sense of what Plaintiff is seeking, and that is when he is actually receiving notice of the same. Counsel represents that in the very short time since filing an appearance, Plaintiff has stated his intent to file for Summary Judgment and has served a Motion for Sanctions.

attempting to sue Defendant for nearly seven years, and this will not cause any further delay. Defendant did not have a legal representative, but again, did not receive notice of the hearing. Despite the dismissals being overturned, Defendant has good and meritorious defenses to Plaintiff's claims, and is likely to succeed at trial, or summary judgment, if this Court allows the subsequent Motion to Amend Tracking Order.

CONCLUSION

Wherefore, because Defendant did not receive notice of the hearing, and because it would not prejudice the Plaintiff, Defendants ask this Court to ALLOW their motion and set aside the entry of default.

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**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF THE TRIAL COURT**

HAMPDEN, SS.

**HAMPDEN SUPERIOR COURT
CIVIL ACTION: 1879CV344**

**RIAN WATERS,
Plaintiff,**

v.

AIDAN KEARNEY, et al.

AFFIDAVIT OF AIDAN KEARNEY

1. My name is Aidan Kearney, and I am one of the Defendants in the above matter.
2. I was the manager for the now defunct Worcester Digital Marketing, LLC and Turtleboy Enterprises, LLC.
3. I discovered that the above matter, which I believed to be dismissed, had been overturned by the Appeals Court, during the week of February 11, 2025.
4. I retained and notified my counsel immediately, who then reviewed the docket to determine the status of the case, and filed an appearance and Motion to Continue while he was on vacation.
5. Having been sued several times in several courts, in several states, and being on the receiving end of several attempts at filing criminal complaints against me by Mr. Waters, all of which have been unsuccessful, I believed that this would be dismissed as well (and was twice).
6. After the second dismissal, I moved to a new house. I did not alert the court to my change of address because the lawsuit had been dismissed.
7. When the Appeals Court overturned the dismissal, I never received notice or any of the Plaintiff's Motions. I have blocked Rian's phone number and email, due to his incessant harassment, so if he attempted to contact me I wouldn't know.

8. As soon as I discovered the default, I notified my attorney.

9. I have meritorious defenses against the Plaintiff.

Signed under the pains and penalties of perjury this 3rd day of March, 2025.

_____ *Aidan Kearney* _____

Aidan Kearney

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, SS.

SUPERIOR COURT
CIVIL ACTION NO. 1879CV00344

RIAN WATERS,
 Plaintiff
vs.
AIDAN KEARNEY, Et al
 Defendants

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**PLAINTIFF’S OPPOSITION TO DEFENDANT’S MOTION TO SET
ASIDE DEFAULT AND MEMORANDUM IN SUPPORT OF PLAINTIFF’S
CROSS MOTION FOR SANCTIONS**

NOW COMES the Plaintiff, Rian Waters, and respectfully submits this Opposition to Defendant Aidan Kearney’s Motion to Set Aside Default. Defendant fails to establish good cause under Mass. R. Civ. P. 55(c), as he presents neither a meritorious defense nor a valid justification for his default. Vacating the default would cause significant prejudice to Plaintiff and undermine the public interest, given Defendant’s systematic witness intimidation and fraudulent business practices.

I. LEGAL STANDARD FOR VACATING THE DEFAULT

“Mass.R.Civ.P. 55(c) requires that ‘good cause’ be shown before a party may be relieved of the default.” *Vicinity v. Langis*, 92 Mass. App. Ct. 815, 819 (Mass. App. Ct. 2017) “Good cause’ requires a showing by affidavit that the defendant

had a good reason for failing to plead or defend in a timely manner and had meritorious defenses. Other factors typically considered are whether the default was wilful, whether setting it aside would prejudice the adversary, and the defaulted party's promptness in seeking relief.” *Id.* at 822

“[O]ther factors that might be considered include the proffered explanation for the default, the good faith of the parties... public interest implications...” In re *Zeitler*, 221 B.R. 934, 938 (B.A.P. 1st Cir. 1998)

II. DEFENDANT FAILS TO SHOW A MERITORIOUS DEFENSE

“In moving to set aside a default, a defendant must accompany its motion with an affidavit **setting forth the facts** and circumstances upon which the motion rests, **including the nature of its meritorious defense.**” *Zurich Am. Ins. Co. v. LM Heavy Civ. Constr. LLC*, 105 Mass. App. Ct. 1103, 247 N.E.3d 861 (2024).

Courts routinely deny motions to vacate default when the defendant relies solely on conclusory statements. See *Johnny's Oil Co. v. Eldayha*, 82 Mass. App. Ct. 705, 708 (2012); *Clamp-All Corp. v. Foresta*, 53 Mass. App. Ct. 795, 807 (2002); *Cicchese v. Tape Time Corp.*, 28 Mass. App. Ct. 72, 74–75, 546 N.E.2d 384, 386 (1989); *Bissanti Design/Build Grp. v. McClay*, 32 Mass. App. Ct. 469, 470, 590 N.E.2d 1169, 1170 (1992).

Here, Defendant Kearney has failed to provide any factual or legal basis for a defense. His affidavit lacks the necessary specifics, failing to identify any material dispute of fact or articulate any legal argument contradicting Plaintiff's claims. Instead, he merely asserts **“conclusory statements that he had a meritorious defense. That, alone, is a fatal omission.”** *Johnny's Oil Co.*, supra, at 708.

This omission is particularly significant at this stage of litigation, after full discovery and appellate review, where courts require a higher standard of merit. See *Litton Bus. Tel. Sys., Inc. v. Schwartz*, 13 Mass. App. Ct. 113, 118 (1982) (“[T]he judge did not abuse his discretion in not giving much weight to the affidavit produced at so late a date”).

Moreover, Defendant's liability has already been partially adjudicated against him. In *Waters v. Kearney*, 20-P-88 (Mass. App. Ct. Aug. 19, 2021), the court reversed a judgment in his favor on the basis that certain defamatory statements were established as defamatory per se. The last time Kearney thought he had a meritorious defense, was “on the ground that the statement at issue in the remaining libel claim included the word ‘allegedly.’ [The Appeals Court] note[d] that that issue was litigated in *Waters I* and the defendants lost.” *Waters v. Kearney*, No. 22-P-1105, 4 n.7 (Mass. App. Ct. May. 28, 2024)

Furthermore, Kearney's conduct has resulted in significant emotional distress and financial harm to Plaintiff, culminating in a diagnosed adjustment disorder that has impaired Plaintiff's ability to work. (AFF. at 8) (Docket 47.1) "In a case of defamation the plaintiff's recovery is limited to actual damages, which are compensatory for the wrong done by the defendant." *Stone v. Essex County Newspapers, Inc.*, 365 Mass. 246, 256 (Mass. 1974) "Actual injury includes not only out-of-pocket expenses, but also harm inflicted by impairment of reputation and standing in the community, personal humiliation, and mental anguish and suffering." *Draghetti v. Chmielewski*, 416 Mass. 808, 815-16 (Mass. 1994) The defamation in the book was the first major stressor to my adjustment disorder that caused significant impairment, and in an affidavit for a motion to reconsider the removal of the default, I cited the cognitive impairment stemming from the defamation in the book as the reason the court should reconsider. (Docket 22.1)

Given the complete absence of any substantive defense and the prior adjudication against him, Defendant's motion to vacate default must be denied. "[A]nything less than a default judgment would have the same result on the plaintiff." *Keene v. Brigham Hospital*, 439 Mass. 223, 237 (Mass. 2003)

III. DEFENDANT'S DEFAULT WAS INTENTIONAL

A party seeking to vacate default must show that the default was not willful or intentional. Courts routinely deny relief where a defendant was properly served and deliberately ignored the litigation. As stated in *Lally v. Dorchester Div. of the Dist. Ct. Dep't*, 26 Mass. App. Ct. 724, 727, 531 N.E.2d 1275, 1277 (1988), “Where a party has been properly served with process, his inordinate delay in seeking removal of a default can be reason enough to deny relief.”

Confirmed Receipt and Deliberate Inaction

Even before the case was dismissed Kearney left motions unopposed without informing me of his intentions (AFF. at 2) (Docket 99 & 101), and he asked me not to mail him anything even though he wouldn’t accept email service. (Exhibit B)

Kearney received appellate briefs and actively engaged in discussions about the appeal, yet he deliberately chose not to respond to this case. (*Exhibit A*) He even admits he ignored the appeal because he hoped the court would dismiss it. *Kearney’s Aff. at 5*.

Evasion and Self-Inflicted Mistake: Blocking Emails & Failing to Update Address

Kearney **admits** to blocking Plaintiff’s phone number and email—an obvious effort to avoid service. Kearney’s failure to update his legal address—combined

with his deliberate decision to block Plaintiff's emails—**was his own mistake, not a valid excuse for default.** He still owns the property where notices were sent, regularly meets with his wife—the current resident—and never claimed he stopped receiving mail or that forwarding was unavailable. (Aff at 5)

Under **Mass. R. Civ. P. 9(b)**, mistake must be pleaded with particularity, yet Kearney provides no factual justification for being unable to receive mail from his house, or ignoring the Appeals Court case. Courts do not set aside default where a party's failure to respond results from their own deliberate choices.

Kearney's excuse that Plaintiff's alleged harassment "forced" him to block communications is also legally insufficient. This is a claim of **undue influence**, which under **Rule 9(b)** must be pleaded with specificity. Kearney fails to identify a single communication that justified his decision—relying instead on vague accusations.

Direct Refusal to Accept Service

On **December 13, 2024**, when directly asked where he wanted to be served, Kearney explicitly stated that he **would not respond** to the case and instructed Plaintiff not to mail him anything further. As a result the Plaintiff moved for the

court to subpoena Kearney to appear to address misconduct and explain his refusal.
(Docket # 122)

Failure to Update Legal Address & Business Responsibilities

As his own **registered agent**, Kearney was legally obligated to update his service address and retain counsel for his company. (Exhibit C) Delivering documents “to a manager or other employee in charge of corporate business constitutes effective service on a foreign or domestic corporation.” *Sykes v. Dish Network*, 2005 Mass. App. Div. 58, 59 (Mass. Dist. Ct. App. 2005)

Kearney’s continued use of WDM’s business assets—despite claiming dissolution—suggests that he has functionally revived or continued his business while evading legal responsibilities. (*See infra*, pg 11.)

Kearney cannot shift blame onto Plaintiff for alleged procedural errors while disregarding his own corporate duties. See **Zurich Am. Ins. Co. v. LM Heavy Civ. Constr. LLC**, 105 Mass. App. Ct. 1103 (2024) (*“It is not at all clear how Superior Court Rules 9A and 9C could apply in circumstances where a corporate defendant does not have counsel.”*)

Pattern of Bad-Faith Excuses and Repeated Disregard for Legal Proceedings

Kearney's default is not an isolated incident—it is part of a longstanding pattern of bad-faith tactics, procedural evasion, and misconduct. He has repeatedly manipulated legal proceedings to escape accountability, fabricating false claims to justify his defaults.

2018: Kearney falsely accused Plaintiff of extortion to excuse his failure to timely respond to litigation. The attached emails (Exhibit D) prove that Plaintiff merely engaged in settlement negotiations that Kearney himself initiated. Instead of addressing the case, Kearney filed a baseless police report and used it as a delay tactic.

November 19th 2021: Kearney was defaulted in the First Circuit. (Aff at 7) Kearney tried to frame me for threatening his kids the same day.

Now: Kearney deploys the same strategy—weaponizing false harassment claims and procedural confusion to avoid consequences. Courts should not enable his continued abuse of the judicial process. “False testimony in a formal proceeding is intolerable. We must neither reward nor condone such a ‘flagrant affront’ to the truth-seeking function of adversary proceedings.” *ABF Freight Sys., Inc. v. N.L.R.B.*, 510 U.S. 317, 323, 114 S. Ct. 835, 839, 127 L. Ed. 2d 152 (1994)

In addition to Kearney's previous defaults, Judge Callan previously condoned his flagrant attacks on witnesses without factual or legal support, allowing his misconduct to persist. (Docket 99) As the Massachusetts Appeals Court cautioned:

“[I]n judging whether the sanction invoked was unduly stern, it is necessary to consider that the defendant had already once been brought back from the dead by a Superior Court judge.” *Greenleaf v. Mass. Bay Transp. Auth.*, 22 Mass. App. Ct. 426, 430 (1986).

Courts recognize that while a single procedural misstep may not justify severe sanctions, repeated violations do. See *Companion Health Servs. v. Kurtz*, 675 F.3d 75, 77 (1st Cir. 2012) (“A severe sanction, such as default or dismissal, is inappropriate in most cases when based on one incident.”) Given Kearney's consistent disregard for legal proceedings, repeated defaults, and history of deception, maintaining the default is necessary to prevent further abuse of the judicial system.

Inadequate "Mistaken Belief" Argument

The defendant's alleged “mistaken belief” that the case would be dismissed does not establish good cause. *Bissanti Design/Build Grp. v. McClay*, 32 Mass. App. Ct. 469, 470, 590 N.E.2d 1169, 1170 (1992) This court can ignore “technical

deficiencies... when the defendant has deliberately and unfairly evaded service and it is reasonably certain that defendant has actual notice of the lawsuit” Wang v. Niakaros, 67 Mass. App. Ct. 166, 171, 852 N.E.2d 699, 703–04 (2006) (see also *A2Z Dental LLC v. Miri Trading LLC*, 436 F. Supp. 3d 430, 432 (D. Mass. 2020)

IV. SETTING ASIDE DEFAULT WOULD PREJUDICE PLAINTIFF

Granting Defendant’s motion would result in severe and unjustified prejudice to Plaintiff. Courts consider prejudice when determining whether to set aside default, and here, the harm to Plaintiff is undeniable. See *Care One Mgmt., LLC v. Brown*, 98 Mass. App. Ct. 589, 599–600, 158 N.E.3d 468, 477–78 (2020).

1. Continued Harassment and Emotional Harm

Kearney’s actions were the primary cause of Plaintiff’s adjustment disorder, which has since progressed to Other Specified Stressor Trauma Disorder. (Aff at 8) Kearney has continued his harassment, recently targeting individuals who have shown support for Plaintiff on social media. (Aff at 9)(Exhibit E)

Kearney has been charged with **over 21 counts of witness intimidation**, and a judge who denied him bail found that a detective’s report "demonstrates a concerted effort and repeated pattern of conduct designed by [Kearney] to cause or threaten economic or emotional injury to witnesses.” (*COMMONWEALTH vs.*

AIDAN T. KEARNEY November 9, (2023) MEMORANDUM AND ORDER ON DEFENDANT'S BAIL PETITIONS (23BP116 and 2382CR00313)

Kearney was recently placed under **new bond restrictions due to additional charges** out of Stoughton District Court 2555CR000225.

2. Further Financial Harm and Occupational Dysfunction

- Kearney's misconduct has directly caused occupational dysfunction, preventing Plaintiff from capitalizing on the trading algorithms he has developed. (Aff 11)
- Kearney has publicly threatened any company that employs Plaintiff, creating an intolerable barrier to earning a living. (Aff 10)
- Plaintiff has already endured years of economic harm due to Defendant's actions and intends to leave the country as soon as possible to recover and focus on business development.

V. Kearney's Fraudulent Business Practices Are Relevant

In 2019, Kearney claimed that Worcester Digital Marketing LLC ("WDM") owned all Turtleboy social media accounts. (Exhibit F). He later dissolved the company, citing "extreme legal fees." (Exhibit C pg 2). Now, Kearney asserts that WDM is defunct, yet he continues to operate the same business, using the same Turtleboy

social media accounts—assets that belonged to WDM—to generate substantial revenue while harassing Plaintiff and witnesses.

Despite claiming his business no longer exists, Kearney has continued profiting significantly from its operations. As *The Atlantic* recently reported, “Being Turtleboy has been very profitable for Kearney. Boston magazine recently estimated that he earns \$45,000 to \$50,000 a month. He doesn’t explicitly dispute this, but notes that he has operating expenses.” (Chris Heath, *The Atlantic*) <https://www.theatlantic.com/magazine/archive/2025/04/turtleboy-blogger-karen-read-murder-trial/681764/>). This directly contradicts his assertions that WDM ceased operations and underscores that his business remains active under a different guise.

Under Massachusetts law, post-dissolution acts that are not ‘winding up’ activities are ultra vires and legally impermissible. *Nat’l Lumber Co. v. Fink*, 93 Mass. App. Ct. 1103, 103 N.E.3d 768 (2018). Furthermore, Kearney is not entitled to distribute business assets for personal gain until WDM’s affairs—including its legal obligations in this case—have been properly resolved. *Boisvert v. McDonough*, 94 Mass. App. Ct. 1119 (2019).

Even if Kearney transferred WDM’s assets, he would not escape liability. Under the mere continuation doctrine, a successor business remains responsible for its predecessor’s obligations when it is essentially the same entity, particularly when

the transfer was done to avoid liability. “The ‘mere continuation’ exception reinforces the policy of protecting creditor rights by allowing recovery against a successor corporation when it is substantially the same as its predecessor.” *Milliken & Co. v. Duro Textiles, LLC*, 451 Mass. 547, 558 (2008).

Kearney cannot dissolve a business only to continue operating it under a different name while evading corporate liabilities. His claim that WDM no longer exists is contradicted by both his continued use of WDM’s assets and his ongoing financial success from the same operations. His corporate shell game should not be allowed to shield him from accountability or excuse his neglect.

The Court Cannot Allow Kearney to Weaponize This Proceeding and Undermine Due Process

Kearney has made clear with threats and actions that, if this case proceeds, he intends to turn it into a spectacle designed to intimidate witnesses, manipulate public perception, and obstruct justice. At Kearney’s recent bail hearing, the prosecutor warned:

“I have no reason to think that he will not show up to court in the future.

I think he regards it as another opportunity to put on the ‘Aidan Kearney Show’ outside.” (*Aff. at 13*)

<https://www.boston.com/news/crime/2025/03/06/prosecutors-say-turtleboy-blogger-intimidated-karen-read-witness-pizza-house-camera/>

This case is not an isolated instance of misconduct. Kearney's pattern of harassment and defamation is well-documented, including 21 charges of witness intimidation, with members of his online network also criminally charged for participating in coordinated harassment efforts. *See O'Neil v. Canton Police Dep't*, No. 23-CV-12685-DJC (D. Mass. Dec. 20, 2024).

Prosecutors have compared Kearney's sustained harassment to "water torture," emphasizing that the cumulative effect is what makes it so destructive (*Boston.com*, March 6, 2025, *supra*).

A fair trial cannot take place under conditions where:

- **Witnesses fear retaliation** for testimony favorable to Plaintiff.
- **Media outlets fear harassment** for any reporting that does not favor Kearney.
- **Court orders are openly defied without consequence.**

Courts have long recognized that **mob-like domination of legal proceedings violates due process**. In *Moore v. Dempsey*, 261 U.S. 86, 87 (1923), the Supreme Court held:

“If in fact a trial is dominated by a mob so that there is an actual interference with the course of justice, there is a departure from due process of law.”

While *Moore* involved a literal mob, the principle applies equally here—if Kearney is permitted to turn this case into a public theater of harassment and intimidation, the trial will be controlled by external forces rather than legal merits.

Sanctions and Conditions Are Necessary to Prevent Further Harm

An immediate sanction is necessary to compensate for the harm caused by Kearney’s continued obstruction and harassment. His December 13, 2024, refusal of service, his false and misleading motion for continuance and to vacate the default, and his February 26, 2025, harassment on X were not isolated incidents—they are part of a coordinated strategy to manipulate and delay legal proceedings at Plaintiff’s expense. Kearney’s conduct has already inflicted substantial financial and emotional harm, requiring swift judicial intervention to stop the bleeding and ensure accountability.

Courts have long held that sanctions must be coercive, not merely symbolic. See *United Mine Workers v. Bagwell*, 512 U.S. 821, 826–830 (1994).

Thus, Plaintiff requests the following mandatory conditions if default is lifted:

1. An immediate \$20,000 sanction payable within 14 days, compensating for Kearney's December 13, 2024, refusal of service, his false motion for continuance, and February 26, 2025, harassment on X.
2. Incarceration if the sanction is not paid, ensuring enforcement given Kearney's stated refusal to comply with court judgments. (Docket # 70.2 at 3 & 4)
3. A bond requirement covering a portion of the anticipated judgment, preventing further procedural evasion.
4. Mandatory sworn testimony regarding Kearney's November 19, 2021, conspiracy and threats against a key witness, ensuring accountability before trial.
5. Pretrial restrictions prohibiting Kearney from publicly harassing or intimidating witnesses in any form.

These conditions align with well-established judicial authority. See *Burger Chef Sys., Inc. v. Servfast of Brockton, Inc.*, 393 Mass. 287, 290, 471 N.E.2d 77, 80 (1984) (holding that judges may condition relief under Rule 55(c) upon a bond or “any other reasonable terms he or she deems just under the circumstances”).

V. CONCLUSION

Defendant has willfully ignored this litigation, failed to present a meritorious defense, and engaged in a pattern of misconduct that has obstructed the judicial process. His default was intentional, his affidavit is riddled with falsehoods, and his history of harassment and evasion demonstrates that setting aside default would only reward bad faith. The prejudice to Plaintiff is severe, both financially and emotionally, and Kearney's continued defiance of legal obligations—including his fraudulent business practices—further supports maintaining the default.

For these reasons, Plaintiff respectfully requests that this Court **DENY** Defendant's Motion to Set Aside Default. If default is removed, it must be conditioned upon sanctions, a compensatory bond, and Kearney's sworn testimony regarding his misconduct.

Respectfully submitted,

/S/ Rian Waters

(530)739-8951 Watersrian@gmail.com Dated: March 13th 2025

Certificate Of Service

I, Rian Waters, hereby certify that I will today serve a copy of the PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO SET ASIDE DEFAULT AND MEMORANDUM IN SUPPORT OF PLAINTIFF'S CROSS MOTION FOR SANCTIONS, exhibits, and cross motion upon Kearney by email at ryan@mclanelaw.com. Ryan agreed to accept email service at 2/26/25 hearing.

/S/ Rian Waters

(530)739-8951 Watersrian@gmail.com Dated: March 13th 2025

EXHIBIT A

/S/ Rian Waters

(530) 739-8951

Watersrian@gmail.com



Rian Waters <watersrian@gmail.com>

2022-P-1105 service

4 messages

Rian Waters <watersrian@gmail.com>
To: Turtleboy Hottakes <Turtleboysports@gmail.com>

Thu, Feb 2, 2023 at 11:47 PM

Hello Aidan,

See attached,

Kind regards

 **Reply brief.pdf**
65K

Turtleboy Hottakes <turtleboysports@gmail.com>
To: Rian Waters <watersrian@gmail.com>

Fri, Feb 3, 2023 at 3:51 PM

I have no idea what this means. Gonna have to explain it to me.
[Quoted text hidden]

Rian Waters <watersrian@gmail.com>
To: Turtleboy Hottakes <turtleboysports@gmail.com>

Tue, Feb 7, 2023 at 8:55 AM

They didn't accept it because you didn't file an Appellee brief.

Basically I expect that they will put you in default for not answering, but I still want the misconduct addressed on the merits.

If you are willing to accept email service, or if you have intentions of filing a brief you should let the court know in writing as soon as possible. I'd probably stipulate to giving you more time if you identify a couple arguments.

Kind regards
Rian
[Quoted text hidden]

Rian Waters <watersrian@gmail.com>
To: Ryan McLane <ryan@mclanelaw.com>

Fri, Feb 21, 2025 at 2:00 PM

As for knowing about the Appeal, I mailed and emailed copies of each, document and even offered to stipulate to giving him more time to file an appellee brief. We have emailed each other since, with multiple emails pertaining to 18CV00344. In December I called him when I was serving a motion to ask where he wanted to be served. He told me not to mail him anything, said he would not respond to the motion, and then threatened to tell the police I threatened to kill him.

[Quoted text hidden]



Rian Waters <watersrian@gmail.com>

Service.

2 messages

Rian Waters <watersrian@gmail.com>
To: Turtleboy Hottakes <Turtleboysports@gmail.com>

Sat, Dec 17, 2022 at 10:14 AM

Hello Aidan,

See attached.
Let me know if you need an extension.

Kind Regards,
Rian

2 attachments

 **Appellate brief 2022 p1105 (fixed).pdf**
1037K

 **Record Appendix 2022 p 1105.pdf**
14406K

Rian Waters <watersrian@gmail.com>
To: Turtleboy Hottakes <Turtleboysports@gmail.com>

Sat, Jan 14, 2023 at 8:44 PM

Hello Aidan,

See attached.

Kind regards,
Rian

[Quoted text hidden]

4 attachments

 **EXHIBIT A gmail motion for sanctions.pdf**
105K

 **motion to cure service.pdf**
72K

 **Exhibit C Gmail correspondence with the clerk.pdf**
159K

 **Exhibit B gmail TRO-PI-consolidation.pdf**
122K

EXHIBIT B

/s/ Rian Waters
530 739 8951
watersrian@gmail.com



Rian Waters <watersrian@gmail.com>

service

3 messages

Rian Waters <watersrian@gmail.com>
To: Turtleboy Hottakes <Turtleboysports@gmail.com>

Mon, Jun 27, 2022 at 10:04 PM

Hello Aidan,

The exhibits are too big, I will mail the package soon.

Kind regards
Rian

3 attachments**affidavit compliance2.pdf**
48K**emergency oposition.pdf**
48K**final Mot TRO perliminary injunction - Black.pdf**
452K

Turtleboy Hottakes <turtleboysports@gmail.com>
To: Rian Waters <watersrian@gmail.com>

Mon, Jun 27, 2022 at 10:36 PM

Rian, please do not mail me anything else. The court date has officially been moved until August 30. I will see you then.
[Quoted text hidden]

Rian Waters <watersrian@gmail.com>
To: Turtleboy Hottakes <Turtleboysports@gmail.com>

Tue, Aug 23, 2022 at 12:11 PM

Hello Aidan,

Will you accept email service? Or do you have another address you want me to serve.

Kind regards,
Rian
[Quoted text hidden]

EXHIBIT C

/S/ Rian Waters

(530) 739-8951

Watersrian@gmail.com

Secretary of the Commonwealth of Massachusetts

William Francis Galvin

Business Entity Summary**ID Number: 001152634**[Request certificate](#)[New search](#)**Summary for: WORCESTER DIGITAL MARKETING LLC****The exact name of the Domestic Limited Liability Company (LLC):** WORCESTER DIGITAL MARKETING LLC**The name was changed from:** TURTLEBOY DIGITAL MARKETING LLC **on** 12-06-2016**The name was changed from:** TURTLEBOY DIGITAL MARKETING LLC **on** 12-06-2016**Entity type:** Domestic Limited Liability Company (LLC)**Identification Number:** 001152634**Date of Organization in Massachusetts:** 11-20-2014**Date of Revival:****Date of Cancellation:** 04-30-2020**Last date certain:****The location or address where the records are maintained** (A PO box is not a valid location or address):

Address: 51 UNION STREET, SUITE 320

City or town, State, Zip code, Country: WORCESTER, MA 01605 USA

The name and address of the Resident Agent:

Name: AIDAN T KEARNEY

Address: 2 FOSTER STREET

City or town, State, Zip code, Country: WORCESTER, MA 01608 USA

The name and business address of each Manager:

Title	Individual name	Address
MANAGER	AIDAN T KEARNEY	111 MASON RD JEFFERSON, MA 01522 USA

In addition to the manager(s), the name and business address of the person(s) authorized to execute documents to be filed with the Corporations Division:

Title	Individual name	Address
SOC SIGNATORY	AIDAN T KEARNEY	111 MASON RD JEFFERSON, MA 01522 USA
SOC SIGNATORY	AIDAN T KEARNEY	111 MASON RD JEFFERSON, MA 01522 USA

The name and business address of the person(s) authorized to execute, acknowledge, deliver, and record any recordable instrument purporting to affect an interest in real property:

Title	Individual name	Address
REAL PROPERTY	AIDAN T KEARNEY	111 MASON RD JEFFERSON, MA 01522 USA

☐ **Consent**☐ **Confidential Data**☐ **Merger Allowed**☐ **Manufacturing****View filings for this business entity:**

ALL FILINGS
Annual Report
Annual Report - Professional
Articles of Entity Conversion
Certificate of Amendment
Certificate of Cancellation

[View filings](#)**Comments or notes associated with this business entity:**[New search](#)



The Commonwealth of Massachusetts
William Francis Galvin

Minimum Fee: \$100.00

Secretary of the Commonwealth, Corporations Division
One Ashburton Place, 17th floor
Boston, MA 02108-1512
Telephone: (617) 727-9640

Certificate of Cancellation

(General Laws, Chapter)

Identification Number: 001152634

1. The exact name of the Domestic Limited Liability Company (LLC) is: WORCESTER DIGITAL MARKETING LLC

2. The date of filing of the original certificate of organization: 11/20/2014

3. The reason for filing the certificate of cancellation:
THE REASON FOR SUCH CANCELLATION IS DUE TO THE EXTREME LEGAL FEES THAT THE COMPANY HAS INCURRED.

4. If the certificate of cancellation is to be effective at a later date, state the effective date: 04/30/2020

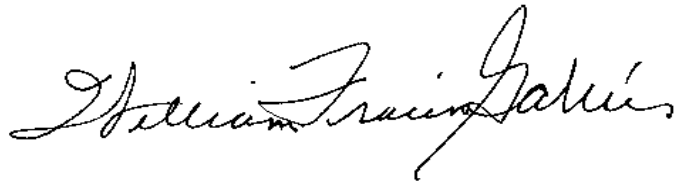
5. Any additional information to be included therein:

SIGNED UNDER THE PENALTIES OF PERJURY, this 29 Day of April, 2020,
AIDEN KEARNEY , Signature of Applicant.

THE COMMONWEALTH OF MASSACHUSETTS

I hereby certify that, upon examination of this document, duly submitted to me, it appears that the provisions of the General Laws relative to corporations have been complied with, and I hereby approve said articles; and the filing fee having been paid, said articles are deemed to have been filed with me on:

April 29, 2020 02:16 PM

A handwritten signature in black ink, reading "William Francis Galvin". The signature is written in a cursive, flowing style with a large initial 'W' and 'G'.

WILLIAM FRANCIS GALVIN

Secretary of the Commonwealth

EXHIBIT D

/S/ Rian Waters

(530) 739-8951

Watersrian@gmail.com



Rian Waters <watersrian@gmail.com>

Dear Aidan

7 messages

Rian Waters <watersrian@gmail.com>
To: Turtleboy Hottakes <Turtleboysports@gmail.com>

Sun, Jul 8, 2018 at 9:14 AM

Dear Aidan

Please don't send messages to my personal page. I was making a lot of money on a poker trip before Clarence messaged me. I will hire representation this week and you can message them.

In the meantime you can send any questions or concerns here.

Thank you in advance
Rian Waters

Turtleboy Hottakes <turtleboysports@gmail.com>
To: Rian Waters <watersrian@gmail.com>

Sun, Jul 8, 2018 at 11:28 AM

So you're not interested in having the blog taken down?
[Quoted text hidden]

Rian Waters <watersrian@gmail.com>
To: Turtleboy Hottakes <Turtleboysports@gmail.com>

Sun, Jul 8, 2018 at 1:27 PM

I am very interested in negotiating peace, but I want some personal space.
What do you have in mind? What conditions are important to you? You can call me if you would rather obviously a NDA would protect your info.

Rian Waters
[Quoted text hidden]

Turtleboy Hottakes <turtleboysports@gmail.com>
To: Rian Waters <watersrian@gmail.com>

Sun, Jul 8, 2018 at 1:48 PM

I am admitting to no wrongdoing nor am I saying that I am Aidan Kearney. Basically I think your lawsuit is a joke but it's just not worth our time and effort to fight it. No one reads that blog anymore so it's of no use to me or the site. It's not worth dealing with you so it's easier to just take the blog down, which I believe is what you want. If you want this then drop the lawsuit, we will unpublish the blog and move on. That's the offer.
[Quoted text hidden]

Rian Waters <watersrian@gmail.com>
To: Turtleboy Hottakes <Turtleboysports@gmail.com>

Sun, Jul 8, 2018 at 4:04 PM

I will get back to you later this week.

[Quoted text hidden]

Rian Waters <watersrian@gmail.com>
To: Turtleboy Hottakes <Turtleboysports@gmail.com>

Tue, Jul 24, 2018 at 12:21 PM

First I want to point out that even if we don't settle, retracting the article before your response is due would cut the damages owed in half. It's tough for me to drop you from the suit because I know my team is stronger than you think,

and if you had insurance I would get a six figure settlement during the deposition phase. But I would rather spend my time and energy winning in a poker room than winning in the court room.

Sadly I can't drop the suit completely because Samantha is still crazy and this case is slowly forcing her back to reality. But I can have a lawyer draft a proper settlement agreement and drop all the defendants besides her. Below is my offers which I tried to make as low as possible.

Option 1

1. NDA, You agree not to write about Samantha or myself.
2. \$1,500
3. \$5,000 advertising credit that expires, which honestly I will likely never use it's just to ease court approval

Option 2

1. NDA, You agree not to write about Samantha or myself without permission
2. You publish a two part article that I'll send in the rough drafts, and I will get final editor rights before they are published. First part will be about my daughters battle with Glut1 and the negligent doctor that didn't want my daughter to make it. If needed the second part will cover Samantha framing me, and my battle to get my daughter back.
3. \$5,000 ad credit that expires.

Take your time to figure what is best for you and TBS, and feel free to ask questions here or by phone.

Best Regards
Rian Waters
(530) 739-8951
[Quoted text hidden]

Rian Waters <watersrian@gmail.com>
To: Turtleboy Hottakes <Turtleboysports@gmail.com>

Mon, Jul 30, 2018 at 12:35 PM

I have to drop option 2.

Give me a phone call and we can do something closer to your offer. The Carr fire has me feeling generous.

[Quoted text hidden]

EXHIBIT E

/S/ Rian Waters

(530) 739-8951

Watersrian@gmail.com



Home



Explore



Notifications



Messages



Grok



Bookmarks



Communities



Premium



Verified Orgs



Profile



More

Post

**Rian Waters**
@WatersRian

...



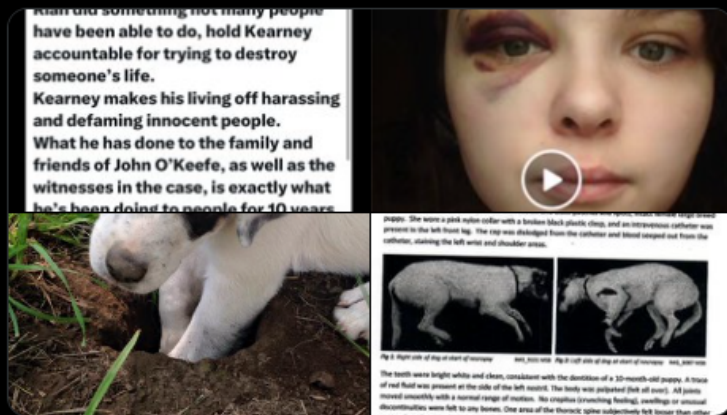
Post

Reply

**Aidan Kearney**
@DoctorTurtleboy

...

It appears as if @Andieldufrense (Kim Fair), an invited guest of the Okeefes in court, is cheering on Rian Waters now. Rian has been suing me and trying to file criminal complaints on me for the last 7 years due to a blog that was ironically written by Kate Peter when she worked for me. Rian was arrested for beating his girlfriend Sam Cardin, the mother of his special needs child who he has never paid a dime in child support to and completely abandoned. He also killed her puppy. The charges were dropped when Sam was threatened by him and was scared to testify. Here's Kates story on it. Guess they support a dog killing domestic abuser now. They will align with literally anyone who opposes me: turtleboysports.com/suing-to-silen...



4:57 PM · Feb 26, 2025 · 25.2K Views

EXHIBIT F

/S/ Rian Waters

(530) 739-8951

Watersrian@gmail.com

HAMPDEN, SS.

RLAN WATERS
Plaintiff

vs.

**AIDAN KEARNEY,
WORCESTER DIGITAL MARKETING, LLC
TURTLEBOY ENTERPRISES, LLC**
Defendants

Aidan Kearney

AFFIDAVIT OF RIAN WATERS IN SUPPORT OF OPPOSITION TO DEFENDANT'S MOTION TO SET ASIDE DEFAULT

I, Rian Waters, state under the pains and penalties of perjury the following facts:

1. All trial court filings were served according to the rules and as certified in the Certificate of Service.
2. Even before this case was dismissed, Defendant failed to oppose motions (Docket 99 & 101) without informing me of his intentions.
3. On December 13, 2024, I directly asked Defendant where he wanted to be served, and he explicitly stated that he would not respond to the case and instructed me not to mail him anything further.
4. I sent Defendant appellate briefs by both mail and email, which he acknowledged receiving, yet he chose not to respond.
5. Defendant claims lack of notice, but he continues to own the property where notices were sent and regularly meets with his wife, who is the current resident.
6. In 2018, Defendant falsely accused me of extortion to justify his default in prior litigation. Attached emails (Exhibit D) prove that I merely engaged in lawful settlement discussions initiated by Defendant himself.
7. On November 19, 2021, Defendant was defaulted in the First Circuit, and on the same day, he attempted to frame me for making threats against his children.
8. Defendant's actions caused me significant emotional distress, leading to a diagnosis of adjustment disorder, which has since progressed to Other Specified Stressor Trauma Disorder.
9. Defendant has engaged in continued harassment, including targeting individuals who have shown support for me on social media (Exhibit E).
10. Due to Defendant's public threats against any company that employs me, I was forced to decline a lucrative job offer in January 2025.

11. Defendant's actions have directly prevented me from capitalizing on my trading algorithms and pursuing my professional ambitions.
12. Although Defendant later dissolved Worcester Digital Marketing LLC (WDM), citing "extreme legal fees" (Exhibit C pg. 2), he continues to operate the same business using the same Turtleboy social media accounts—assets that previously belonged to WDM—to generate substantial revenue.
13. At Defendant's bail hearing, the prosecutor acknowledged that Defendant views legal proceedings as an opportunity for self-promotion, stating: "I have no reason to think that he will not show up to court in the future. I think he regards it as another opportunity to put on the 'Aidan Kearney Show' outside."
14. On June 28, 2022, Defendant made it clear that if this case proceeds to trial, he intends to turn it into a spectacle for profit.
15. Given Defendant's conduct, I cannot in good faith subject witnesses to a proceeding where they will be harassed and publicly attacked.

Signed under the pains and penalties of perjury this 13th day of March 2025.

/S/ Rian Waters

(530)739-8951 Watersrian@gmail.com Dated: March 13th 2025

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, SS.

SUPERIOR COURT
CIVIL ACTION NO. 1879CV00344

RIAN WATERS,
Plaintiff

vs.

AIDAN KEARNEY, Et al
Defendants

)
)
)
)
)
)

Superior Court Rule 9D
RECONSIDERATION

HAMPDEN COUNTY
SUPERIOR COURT
FILED

APR 03 2025

James G. [Signature]
CLERK OF COURTS

PLAINTIFF'S MOTION TO RECONSIDER VACATING DEFAULT

NOW COMES the Plaintiff, Rian Waters, and respectfully moves this Honorable Court, pursuant to Superior Court Rule 9D, to reconsider its ruling vacating default on the grounds that the ruling contains particular and demonstrable errors of law.

I. INTRODUCTION

Plaintiff moves for reconsideration of the Court's ruling vacating default against Defendant Aidan Kearney, as the ruling contains demonstrable legal errors and misapprehensions of fact. Under Mass. R. Civ. P. 55(c), vacating default requires both (1) good cause and (2) a meritorious defense. Massachusetts courts have consistently held that both elements are mandatory, not discretionary.

However, the Court vacated the default without requiring Defendant to present a meritorious defense, contradicting controlling case law, including *Vicinity v.*

5/7/25: Defendant submitted the required affidavit, and has shown good cause and a meritorious defense. The Default is removed. Trial is set for July 7, 2025. *[Shukla, J.]* 5/7/25: em'd

4/8/25: Plaintiff is correct that Defendant did not provide more than a conclusory statement that he has meritorious defenses. See *Rowe v. Miles Group Realty, Inc.*, 77 Mass App. Ct. 1117 (2010). Within 14 days of this order, Defendant must file an affidavit with facts supporting his motion. Otherwise, the default will be reinstated. Once Defendant provides an affidavit, the Court will issue a ruling regarding the motion. *[Shukla, J.]* 4/8/25

the default will be reinstated. Once Defendant provides an affidavit, the Court will issue a ruling regarding the motion. *[Shukla, J.]*