

23-15547

United States Court of Appeals

FOR THE NINTH CIRCUIT

RIAN WATERS,

Appellant

v.

Meta Platforms INC.

Aidan Kearney

Worcester Digital Marketing LLC.

Appellees

Appeal From the United States District Court for the Northern District of
California, Oakland
Case No. 23-cv-00643-YGR (RS)

Appellant Brief of Rian Waters

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I. Introduction

Just as a rotten apple can spoil the other apples in a basket, the District Court’s incorrect and incomplete interpretation of the facts and legal standards can have severe consequences for the case's outcome and potentially undermine the integrity of the justice system. By exposing the judge's errors and demanding a fair and accurate interpretation of the applicable law, the appeal can help prevent the rotten apple from spoiling the entire basket and ensure that justice is served. As the

Supreme Court stated in *Stump v. Sparkman*, 435 U.S. 349, 367 (1978) dissenting opinion, “a judge is not free, like a loose cannon, to inflict indiscriminate damage whenever he announces that he is acting in his judicial capacity.”

The only sensible argument for denying me relief in this case is an argument grounded in an apparent moralistic fallacy, that it simply could not be true that Meta is intentionally supporting conspiracies that are as evil as I allege, and that Massachusetts courts and police could not be exploiting Facebook to punish citizens without due process. However, if this court considers the facts of the case objectively, it becomes clear that this argument is nothing more than a defense of the concept of "too big to fail." The District Court's decision to dismiss the first three counts of my complaint was based on a plain error misapplying the Standards of the wrong clause of Section 1985(2). *Infra* 35-36 Defendant Aidan Kearney has been obstructing my ability to present evidence freely and fully since 2019, and the Constitution demands that I receive justice.

This brief may not be perfect, but it is imperative that Worcester Digital Marketing LLC is served by April 30th, 2023. Failure to do so would result in the company's extinction, which would enable Kearney to conceal and transfer his weaponized assets. *Infra.*, 22

II. Jurisdictional statement

The district court has subject matter jurisdiction over the Federal law claims (42 U.S.C. § 1983, 42 U.S.C. § 1985, and 42 U.S.C. § 1986) pursuant to 28 U.S.C. § 1331. This court of appeals has jurisdiction pursuant to 28 U.S. Code § 1291, as the district court made a final decision on April 5th, 2023, when it dismissed the entire complaint. The Notice of Appeal was timely filed on 4/11/2023.

III. Statement of issues to be decided

1. Whether the District Court erred in dismissing the case for failure to state a claim, and whether the court should have found that the plaintiff is likely to succeed on the merits.
 - a. Whether the District Court's decision was founded on clearly erroneous findings of fact, by omitting and mischaracterizing material facts and misapplying the standard of review for a pro se civil rights case.
 - b. Whether the District Court erred in applying the wrong clause of 42 U.S.C. § 1985(2) and failing to consider recent case law regarding what injuries are compensable under the statute.
 - c. Whether the District Court erred in prematurely deciding the fact-bound state action inquiry and failing to consider all the relevant state action facts and theories together.
 - d. Whether Meta's past conversations with Kearney about paying for a guarantee that his profiles wouldn't be unpublished, and Meta's decision to allow Kearney special privileges to break their rules, and Meta's opposition to an investigation into Kearney's obstruction, and the timing of Meta's decision to delete my Facebook account could infer agreement or complicity in a conspiracy with Kearney.

2. Whether I, (the plaintiff) is likely to suffer irreparable harm in the absence of relief preventing further harassment, in light of consistent harassment before court hearings, numerous heinous threats to witnesses, and a promise to continue harassing until a witness is destitute.
3. Whether the balance of equities tip in my favor.
4. Whether the injunction and consolidation is in the public interest.
5. Whether advancing the trial is appropriate to prevent due process issues arising from past conspiracies in this Circuit.

IV. Statement of the case

Irreparable harm

Kearney has a pattern of hindering my ability to present an effective case by intentionally stressing my adjustment disorder before court hearings, (ER 62 at 5) (ER 19 ¶ 59-63; ER 15 at ¶ 36; ER 17 at ¶ 50,) and Kearney has made it abundantly clear that I cannot safely have witnesses absent relief, and that he will keep attacking my witnesses until a court or other power intervenes. “I will not stop until you beg for mercy, and then I’m going to do it twice as much, you’re gonna feel the way I felt when I was in my garage when I wanted to kill myself.” ER 20 at ¶ 63 see also (ER 14 at ¶ 31; ER 18-21 at ¶ 58, ¶ 59, ¶ 60 ¶ 67, ¶ 68) Preoccupation with Kearney’s past threats caused physical harm and mental anguish by stressing my adjustment disorder and preventing me from reasonably sleeping, eating, working, and enjoying the blessings of life. (ER 15 at 36; ER 27 at 121; ER 31 at 152; ER 32 at 160)

During the last deposition I had with Kearney, he harassed me before, after, and during the deposition, causing the deponent to cry and ask to stop the deposition (ER 62 at 3-4).

On April 10th 2023, five days after the District Court's plainly wrong decision, Defendant Aidan Kearney harassed the primary witness in this case, Cristina Yakimowsky, and he specifically said the harassment was because she shared screenshots of his group chat, and because I used those screenshots in court, Kearney repeatedly asked her if she regrets sharing the screenshots, [technically videos.] Kearney then bragged that he has not been charged with a crime [yet].

In the operative complaint I only name one witness, this is not because I only have one witness, but because Kearney consistently destroys the lives of every witness that I name in a court filing. If Aidan Kearney dies tomorrow, I will get an attorney, and two of Kearney's Co-conspirators in the Count 1 conspiracy and a confidant will testify at trial, several of Kearney's associates could testify as to the state action inquiry, and numerous witnesses could testify about my character and my glamorous life that Kearney destroyed.

If no one provides safety for witnesses and attorneys, I will be forced to continue the case pro se, and I will only have one very reluctant witness. Therefore, abstention under the current circumstances would run afoul with the due process clause of the 14th amendment.

November 19th conspiracy Count I

The first conspiracy on November 19th, 2021, was to dox my therapist (who Kearney identified would be a key witness ER 16 at 38) on Kearney's Clarence Woods Emerson Facebook profile, and thereby cause his followers to threaten and harass her. ER 15 at 36 After Cris Gagne identified my therapist, ER 16 at 39, I commented underneath it saying that I intended to present to the court the post and any resulting threats to show the court why Facebook needed to remove the page. ER 16 at 40

The First Amended Verified Complaint, (Here on "FAVC") takes issue with the second conspiracy that day, and alleges that defendants Meta Platforms Inc. ("Meta"), Aidan Kearney, and Worcester Digital Marketing LLC ("WDM") violated the first clause of 42 U.S.C. § 1985(2) because on November 19th 2021 Kearney conspired with Cristina Yakimowsky, Laura Hakes, and Cris Gagne ("conspirators") in WDM's Facebook group titled "#BlogDat" to deter or prevent me and/or witnesses from attending or testifying freely and fully in federal court (First Circuit 21-1582) by impersonating me on Meta's platform "Facebook," by creating fake threats, and taking and sending screenshots of the fake threats to frame and punish me for threatening to harm Kearney's children. ER 29 at 132, 134

Notably the complaint uses the words “believe in allege”, when alleging that Kearney created the profile, because the verified complaint is stated under penalties of perjury, and unlike the rest of the complaint that fact is not certain. ER 36 at 195.

Cristina Yakimowsky provided videos scrolling the #BlogDat Facebook group chat from her perspective, which showed that Kearney at least orchestrated parts of the Count 1 conspiracy. ER 64-74; ER 18-19 at 56 & 58-9.

It can be inferred that Kearney sent the November 19th, 2021, threats, because Kearney privately sent his conspirators screenshots of the fake threats and asked his coconspirators to privately send him screenshots of the fake threats so he could use them and act like he found the threats innocently. (ER 64-65 Exhibit A 1-2, & 4) (ER 17 at 46; ER 29 at 136)

Cristina Yakimowsky participated in the conspiracy by sending Kearney screenshots of the fake threats, (ER 67 Exhibit A7 & ER 70 Exhibit D2) and criticizing Kearney’s use of his real address in the threats and suggesting that he should have informed the other conspirators earlier. (ER 30 at 141) (ER 66 Exhibit A5)

At 11:42pm on November 19th, 2021, I sent Meta’s attorneys and Kearney’s attorney screenshots of the fake profile and threats, and Kearney’s attorney forwarded my email to Kearney at 12:16am on November 20th, 2021, saying, “bro

its getting worse.” Kearney then uploaded his lawyer’s email into the #BlogDat group chat. (ER 13 at 21; ER 72 Exhibit F 1-2, ER 44 at 4)

Kearney implied to his coconspirator that the purpose of the threats was to get an order against me to prevent me from filing in court cases. ER 73 Exhibit F04

According to Kearney the fake profile was up for about 15 minutes before someone reported it, and coconspirator Laura hakes correctly presumed it was me. (ER 17 at 48) (ER 74 Exhibit G1)

While talking about my motions to investigate the conspiracy, Kearney told Cristina Yakimowsky not to worry because “I’m the one who did it.” (ER 17 at 55; ER 71 Exhibit D3)

On either November 23rd, 2021, or December 1st, 2021, Aidan Kearney submitted to a state district court the screenshots that Yakimowsky sent him, which he knew to be fabricated with intent to intimidate witnesses and prevent me from testifying freely in First Circuit case 21-1582. (ER 17 at 50-53; ER 30 at 142)

Kearney intentionally gave the state court an out-dated address for me in attempt to get an unopposed secret restraining order and prevent me from testifying freely in First Circuit case 21-1582. (ER 17; ER 30)

Kearney stated false testimony in court (that he clicked on the fake profile and that it led to my genuine profile with our past messages ER 17 at 53) with intent to make me look guilty for threatening children, and thereby intimidate witnesses and

prevent me from testifying freely in First Circuit case 21-1582. (ER 30 at 144) (ER 68 Exhibit B)

On January 20th, 2022, Kearney punished Cristina Yakimowsky by publishing screenshots of the #BlogDat group chat from the Clarence Woods Emerson perspective proving he conspired with her on Facebook to commit witness intimidation against the alleged victim in Yakimowsky's state criminal court case. ER 19 at 59

The November 19th threats caused a due process violation by hampering my ability to present an effective case in federal court by critically stressing my adjustment disorder causing significant preoccupation and mental anguish preventing me from being able to focus on the reply brief and get reasonable sleep at night. (ER 30 at 145) (ER 31 at 152) (ER 15 at 36)

The Defendants' acts also reinforced community intimidation by confirming that it was too dangerous to have witnesses without protection. (ER 31 at 151)

It can be inferred that Kearney sent the November 19th, 2021, threats, because Kearney has consistently defaulted or used ex parte conversations to avoid testifying about the allegations, and while given plenty of opportunity Kearney has not denied the allegations in court. (ER 29 at 137) ER 23-25 at 82-101; ER 62 at 2

It can be inferred that Kearney sent the November 19th, 2021, threats, because the conspiracy happened the same day he defaulted in the First Circuit, and there is

a long-documented pattern of Kearney sending threats and intimidating witnesses, and Kearney says attacking children is the best way to get pro se litigants to drop lawsuits. (ER 29 at 135)

Count II Conspiracy

The FAVC contends that Kearney violated the first clause of 42 U.S.C. § 1985(2) on June 18th, 2022, when Kearney sent threats to punish Yakimowsky specifically because she shared screenshots of his group chat. (ER 20 at 64) Kearney said he would harass her customers and he threatened to continue using stochastic terrorism until Yakimowsky wanted to commit suicide and begged for mercy, then he said he would do it twice as much. (ER 16 at 63) The complaint alleges that Kearney knew the threats would stress my (the Plaintiff's) adjustment disorder and hinder my ability to present a full and effective case in the Supreme Court, (U.S. 22-5133) Rian G. Waters, Petitioner V. Facebook, Inc., et al.), (ER 27 at 120-21) while my time to file a cert petition was still pending. (ER 28 at 123)

Kearney's June 18th threats are like a dog whistle for his followers, and with a unity of purpose and understanding Kearney intentionally sent the threats to incite his followers to cause harm and deter witnesses from participating. (ER 32 at 155-56; ER 20-21 at 65-67)

On July 14th I filed a Petition for a writ of certiorari in the Supreme Court primarily focusing on addressing fundamental due process issues and asking the

court to investigate the obstruction (including the June 18th threats), rather than addressing the merits. ER 28 at 124. Kearney's June 18th, 2022, threats violated due process rights by preventing me from focusing on, and fairly addressing the merits of my Petition for a writ of certiorari, which is a rare opportunity wasted. (ER 32 at 158)

As in this case, neither Kearney nor Meta supported the courts' sua sponte mischaracterization of my 42 U.S.C. 1985(2)(i) claim. To this day no court has provided an intelligible reason for denying the 42 U.S.C. 1985(2)(i) claim in that case, if it was safe for me to have an attorney or witnesses, I undoubtedly would have won. (ER 32 at 159)

Meta's Knowledge

The District Court falsely claimed that I "fail[ed] to allege that Meta was aware of Kearney's intent to intimidate or interfere with Plaintiff's participation in the litigation." However, Meta was a codefendant with Kearney in *Waters v. Facebook Inc. et al.* District Court 3:20-CV-30168; First Circuit 21-civil-01582; Supreme Court 22-5133 and 21A626 (ER 13 at 20)

Meta was thereby made legally aware that their codefendant had proudly "weaponized" their platform, and that a week after Kearney found out about the first federal lawsuit, he stated, "I want to make sure the message is sent here, if you ****

with me, if you try to sue me, I'm not going to go after you, I'm going to go after your f***** family.” ER 14 at 31

Meta was legally aware that Aidan Kearney had frequently encouraged threats to witnesses, attorneys, and plaintiffs by misrepresenting details of court proceedings and pressing the “like” button on threats of violence. (ER 15 at 30-33)

Meta was legally made aware that Aidan Kearney used the personal Facebook account (that unsurprisingly was in the #BlogDat group chat) "Clarence Woods Emerson," for commercial public shaming and that Kearney was flagrantly breaking several rules that were made for safety. ER 14 at 29

Meta also knew the details of the November 19th, 2021, conspiracy, not through their role as a publisher but through their attorneys. On November 19th, 2021, I emailed screenshots of the fake copy of my Facebook profile, and the fake threats to the lawyers that were representing Facebook in First Circuit case 21-1582, and I asked them to investigate “who created this account and sent these threats. I will contact US Marshalls as soon as possible.” (ER 72 Exhibit F 1) Facebook never responded. ER 13 at 21

Meta knew that I presented screenshots to the court of a Facebook group chat obtained by a private party indicating that Kearney obstructed the conspiracy in a Facebook group chat. ER 26 at 109; ER 27 at 118-19

Meta was also legally aware that Kearney's harassment caused me to have an adjustment disorder, which causes sleep disturbances and preoccupation. ER 27 at 121)

Meta knew Kearney and WDM's public shaming and conspiracies were dependent on Facebook for reach and effect at all times relevant to the complaint. (ER 31 at 147; ER 14 at 23-24; 27-29)

Meta's role in conspiracies

Meta knew that Kearney's witness intimidation constitutes a breach of duty as a party in a Federal Court and Meta continued to give substantial assistance and/or encouragement. (ER 31 at 148; ER 15 at 31-33)

With consideration to the surrounding circumstances and timing, Meta's decisions to delete my Facebook account on November 24th, 2021, preventing me from getting evidence of the fake profile that I had reported, and evidence that Kearney's crimes were in response to my comments that I planned on using the evidence in federal court. ER 13 at 22; as well as Meta's decision to oppose investigations into Kearney's conspiracy (ER 14 at 26,) justifies an inference of agreement and complicity when a 2-minute investigation would have uncovered the conspiracy and prevented further harm. (ER 14 at 26; ER 31 at 149)

Meta showed deliberate indifference to constitutional rights, as they had ample time to correct or prevent the continued damage of the conspiracies, yet Meta keeps doubling down on protecting the conspiracy. (ER 33 at 166)

Kearney claimed in his book, “I am Turtleboy” (2018) that he discussed paying for a guarantee that his profiles wouldn’t get banned with Facebook employees Phil Perry and Nick Marquez. (ER 31 at 146; ER 13 at 16-19) (Exhibit C)

The Wall Street Journal released documents leaked from Facebook showing that Facebook allows certain users to post violations to community standards and/or laws with impunity. ER 13 at 17

On several occasions including but not limited to September 14th, 2021, and September 16th, 2021, Kearney posted with his Facebook profile “Clarence Woods Emerson,” screenshots showing that Meta was allowing him to post after they told him he was suspended from posting for breaking Facebook’s community standards. ER 13 at 18

On or about December 11th, 2021, Kearney told his inner circle that he was posting from another Facebook account because Facebook was preventing him from posting with Clarence Woods Emerson on his computer, although Kearney claimed Facebook was still letting him use the Clarence Woods Emerson account from other devices. ER 69; ER 13 at 19

In Kearney's book "I am Turtleboy" he describes how he is dependent on Facebook for growth and recruiting. Kearney has shown several times that he gets ~90% of his traffic from Facebook. ER 14 at 23

Kearney has threatened my past roommates using Facebook, which paired with his access to the state's registry information (that he gets through Facebook) prevented me from renewing my driver's license. (ER 14 at 25)

WDM's Role

In January 2019 Kearney sworn by affidavit that WDM owns all Turtleboy websites and social media accounts. ER 12 at 11. WDM therefore owned the #BlogDat group chat and the Clarence Woods Emerson Facebook account, and conspired with Kearney and the other conspirators by using its assets for the planning and execution of the conspiracy. (ER 29 at 133)

Aidan Kearney is the sole owner, officer, and manager of WDM. ER 12 at 12

Aidan Kearney filed certificates to cancel WDM on 4/30/2020. Kearney has not wound down, and has even increased business using the assets, and the LLC continues to exist for three years pursuant to Mass. Gen. Laws Ch. 155 § 51 until April 30th, 2023, or whenever active litigation is complete. (ER 12 at 13)

Kearney conspired with WDM by conspiratorial design, in that he intentionally weaponized WDM's social media profiles (ER 21 at 66), so that his followers would routinely harass whoever he targeted. (ER 20 at 65; ER 32 at 155-56)

Kearney conspired with WDM by conspiratorial design, in that he used the assets of a defunct company for the purpose of making it difficult for a plaintiff to hold him liable and reach the assets. (ER 32 at 157)

While not mentioned in the complaint, Kearney has talked about conveying and concealing WDM's assets to Europe specifically so he could continue business after losing a lawsuit, which is why it is important to serve WDM before the company is extinct.

Count III

The complaint alleges that Meta was made legally aware through their attorneys, (ER 33 at 163) that there was a conspiracy to impersonate me threatening to harm children on Facebook, (ER 72 at F1) and that the conspiracy was formed in one of Meta's group chats. (ER 13 at 21; ER 64-67) Meta could have prevented continuing damage of the Count 1 conspiracy, and entirely prevented the Count 2 threats that caused significant injury, by not opposing investigations into the conspiracy, (ER 14 at 26; ER 31 at 149), and by confirming that Cristina Yakimowsky's evidence was genuine before June 18th, 2022. (ER 33 at 166) Meta could have stopped giving Kearney special privileges to post more toxic stuff than normal people without consequences. (ER 13 at 16-19; ER 31 at 146) Which amounts to a violation of 42 U.S.C. § 1986

Count 4 and 5

Count four and five assert that Kearney's public shaming over crimes he knew I did not commit amounts to punishment without due process of the law, in violation of 42 U.S.C. § 1983, because numerous facts and multiple theories support that Kearney was operating under the color of the law.

The only state action fact that the District Court addressed, was that Kearney has a login password to instantly search the State's criminal and family court dockets, which I alleged shows that the State has empowered Kearney with state resources. While my initial disclosure certainly would have included the short video of Kearney bragging and proving that he has access and that the general public does not, if necessary I could amend the complaint to include the URL and date that Kearney made this evidence public. This fact causes me damage by intimidating me from seeking judicial relief in family court for my daughter.

In my opinion, the biggest showing of state action, is that these threats and outrages would not have occurred or caused significant damage without an unbelievable amount of **unintelligible** judicial inaction approving of Kearney's past obvious crimes. ER 23-27 In one instance, after an ex parte conversation with Kearney, Judge Michael Callan unintelligibly cancelled the witness subpoena that it had issued for Kearney, (ER 24 at 92-94) and then rescheduled the hearing addressing Kearney's misconduct (including the June 18th threats) for two months later, to the same day he scheduled a final pre-trial conference, effectively making it

impossible to appeal his approval of Kearney's flagrant misconduct before the FPT conference.

Two months later at the start of the hearing, the same judge conclusory denied relief without anyone arguing exculpatory evidence or a reason why Kearney's threats to witnesses are acceptable. ER 24 at 95 That decision will likely be reversed soon. MA. Appeals Court 2022-P-1105

There is not enough space to argue every state action fact that the judge failed to find in this brief, ER 21-26 at 69-111, but this should have been a fact bound determination anyway.

Procedural history

I, Rian Waters, proceeding pro se, filed an application to proceed in forma pauperis ("IFP") (Dkt. 15), the operative First Amended Verified Complaint ("FAVC") (Dkt. 17) ER 9-36, and a motion for a temporary restraining order, preliminary injunction, and consolidation of trial on the merits ("TRO") (Dkt. 20) ER 37-61. The Chief Justice took over the case and sua sponte denied the TRO, and dismissed the case pursuant to 1915A on April 5th, 2023, with an incomplete and inaccurate characterization of the facts and legal theories, and without any findings on the irreparable harm in the form of due process violations in the District Court, the public's interest, or the balance of equities, all of which were relevant to the sliding scale approach for injunctions. ER 49

Within two hours of the court electronically filing his decision to dismiss the case, I filed a Rule 59 E motion, pointing out in bold that the court made a plain error holding my first two claims to the standard of the second clause of section 1985(2), when in fact it was alleged that there were conspiracies to obstruct a federal proceeding pursuant to the first clause of section 1985. (Dkt 22) I noted that my adjustment disorder prevented me from reading the rest of his decision (at the time.)

I filed a notice of appeal on April 11th 2023..

Relief requested in TRO motion

ER 41-42 Pursuant to Federal Rule of Civil Procedure 65(B), Plaintiff Rian Waters requests that this court issue an Ex Parte (Kearney was notified with facsimile service by email) Temporary Restraining Order preventing WDM, and Aidan Kearney to refrain from making any blog, post, or video, that shames, threatens, discusses, or otherwise harasses any persons involved in this case including, court officials, natural parties, lawyers, or witnesses, on Facebook or any website or social-media page directly associated with Turtleboy, including but not limited to TBDailynews.com, and Clarence Woods Emerson., starting 10 days before any hearing for this motion.

Pursuant to Federal Rule of Civil Procedure 65 Plaintiff Rian Waters requests that after hearing, this court issue a preliminary or permanent injunction requiring

Kearney to remove, and refrain from making any blog, post, or video, that shames, threatens, discusses, or otherwise harasses any persons involved in this case...

I noted that Kearney would still be allowed to communicate his beliefs on any and all traditional media that he has not weaponized.

Pursuant to Federal Rule of Civil Procedure 65(a)(2), I moved for the court to advance the trial on the merits and consolidate the trial with the hearing to issue a permanent injunction. I argued that the Section 1983 claim will be better addressed when I have an attorney.

I requested that the court reschedule the hearing for as soon as legally possible, and that under inherent power to ensure 14th Amendment due process the court issue witness subpoenas for Aidan Kearney and Cristina Yakimowsky to appear at the hearing/trial.

V. Summary of argument

This court should immediately summarily reverse the District Court's decision, because the court used a plainly wrong legal standard to dismiss the complaint, *infra* 28-31, particularly the Section 1985 claims, as was ironically noted in the case that the court cited to support the decision. *Infra* 35-36

The court's decision is not adequate to support meaningful appellate review, as the court failed to make findings for most of the state action facts, *infr* 44-45, and to

the other three elements of the sliding scale approach for injunctions. *Infra* 32, 58-60

The rest of the brief is just to provide insurance in case this court searches for a reason to affirm the Lower Court's decision.

VI. Argument

1915(e)(2)(B)(ii) Dismissal standard and liberal interpretation.

This court “review[s] de novo a district court's dismissal of a complaint under 28 U.S.C. § 1915A for failure to state a claim.” *Nordstrom v. Ryan*, 762 F.3d 903, 908 (9th Cir. 2014) “To survive § 1915A review, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is *plausible* on its face. Pro se complaints are construed ‘liberally’ and may only be dismissed if it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. Dismissal of a pro se complaint without leave to amend is proper only if it is absolutely clear that the deficiencies of the complaint could not be cured by amendment.” *Id.* internal citations omitted; see also *Watison v. Carter*, 668 F.3d 1108, 1112 (9th Cir. 2012).

Courts deciding a complaint's sufficiency “must consider the complaint in its entirety” along with “matters of which a court may take judicial notice.” *Tellabs, Inc. v. Makor Issues & Rights*, 551 U.S. 308, 322 (2007). “A party may set out 2 or more statements of a claim... If a party makes alternative statements, the pleading is

sufficient if any one of them is sufficient.” FED. R. CIV. P. 8(d)(2)-(3). “Twombly did not alter courts' treatment of pro se filings; we continue to construe pro se filings liberally... Courts have an obligation, where the petitioner is pro se, particularly in civil rights cases, to construe the pleadings liberally and to afford the petitioner the benefit of any doubt.” *Hebbe v. Pliler*, 611 F.3d 1202, 1205 (9th Cir. 2010). The court reviews for abuse of discretion the district court's decision not to grant leave to amend. *Sharkey v. O'Neal*, 778 F.3d 767, 774 (9th Cir. 2015) “Indeed, [the Supreme] Court has suggested that a trial court might abuse its discretion by dismissing an IFP suit with prejudice if ‘frivolous factual allegations [can] be remedied through more specific pleading.’” *Lomax v. Ortiz-Marquez*, 140 S. Ct. 1721, 1726 (2020) quoting *Denton v. Hernandez*, 504 U.S. 25, 34, 112 S.Ct. 1728, 118 L.Ed.2d 340 (1992)

TRO/ Preliminary Injunction Standard

The Court “review[s] de novo the legal premises underlying a preliminary injunction. Otherwise, we review for abuse of discretion the district court's grant of a preliminary injunction. We will reverse a preliminary injunction when a district court based its decision on an erroneous legal standard or on clearly erroneous findings of fact.” *Federal Trade v. Enforma Natural Products*, 362 F.3d 1204, 1211-12 (9th Cir. 2004) citations omitted “A district court must set forth findings of fact and conclusions of law supporting an order granting an injunction. Fed.R.Civ.P.

52(a)¹. Oral or written findings are permitted. A failure to comply with Rule 52(a) does not require reversal unless a full understanding of the question is not possible without the aid of separate findings. We may affirm if the findings are sufficiently comprehensive and pertinent to the issues to provide a basis for decision or if there can be no genuine dispute about the omitted findings.” *Federal Trade.*, at 1012 “It is of the highest importance to a proper review of the action of a court in granting or refusing a preliminary injunction that there should be fair compliance with Rule 52(a)” *Mayo v. Canning Co.*, 309 U.S. 310, 316 (1940) This is especially so because the decision was sua sponte. JUSTICE SCALIA, wrote against sua sponte recharacterization in a concurring opinion. *Castro v. U.S.*, 540 U.S. 375, 386-87 (2003) (“[T]he overriding rule of judicial intervention must be ‘First, do no harm.’ The injustice caused by letting the litigant's own mistake lie is regrettable, but incomparably less than the injustice of producing prejudice through the court's intervention.”)

“[T]he legal standards applicable to TROs and preliminary injunctions are substantially identical.” *State v. Trump*, 847 F.3d 1151, 1159 n.3 (9th Cir. 2017)

¹ Rule 52(a) has been slightly amended, “In an action tried on the facts without a jury or with an advisory jury, the court must find the facts specially and state its conclusions of law separately... In granting or refusing an interlocutory injunction, the court must similarly state the findings and conclusions that support its action.” Fed. R. Civ. P. 52

“A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” *American Trucking v. City of Los Angeles*, 559 F.3d 1046, 1052 (9th Cir. 2009)

The District court sua sponte argued that “A plaintiff must make a threshold showing of likelihood of success on the merits of his claim.” citing *Winter v. Nat. Res. Def. Council. Inc.*, 555 U.S. 7, 20 (2008). The District Court mischaracterized the facts supporting likelihood of success, and did not address or make any finding as to the public interest and irreparable harm that will result from abstention, including the resulting due process issues in both the District Court and this court, which were relevant to the sliding scale approach argued in my TRO motion. The Ninth Circuit has still used the sliding scale approach since *Winter*. “[W]e hold that the ‘serious questions’ approach survives *Winter* when applied as part of the four-element *Winter* test.” *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131-32 (9th Cir. 2011) “[A] stronger showing of one element may offset a weaker showing of another. For example, a stronger showing of irreparable harm to plaintiff might offset a lesser showing of likelihood of success on the merits.” *Id.*, at 1131 when (“serious questions going to the merits were raised and the balance of hardships tips sharply in plaintiffs favor.”)

Advancing the trial is necessary to repair the status quo.

Witness intimidation is rife and unchecked, denying me the opportunity to retain legal representation or depose and converse with witnesses in a just and equitable manner. I am disinclined to prosecute this case pro se, so I beseech the court to ensure the safety of any attorney who would take the case. Once Aidan Kearney is found liable for Counts I & II, he will have no further leverage or incentive to obstruct the proceedings, which I contend will result in a greater degree of safety for witnesses than any injunction could ever provide.

To ensure the provision of due process, this court is obligated to rectify the current status quo. Advancing the trial is the most straightforward means of expeditiously and equitably mending the damage caused by civil rights conspiracies and forestalling any ensuing due process violations in this court. It would likewise contravene my due process rights to endorse evident threats that infringe upon my constitutional rights without providing me with a justifiable basis for such actions. “Where no judicial resources have been spent on the resolution of a question, trial courts must be eroding the principle of party presentation so basic to our system of adjudication.” *Arizona v. California*, 530 U.S. 392, 412-13 (2000)

Absent relief I will suffer irreparable harm

I argued that under the current circumstances abstention would run afoul with the due process clause of the 14th Amendment, “[P]ast wrongs are evidence bearing on

whether there is real and immediate threat of repeated injury.” *Blum v. Yaretsky*, 457 U.S. 991, 1001 (1982) citation omitted “[A]n eventual trial that reflects witness intimidation or jury tampering is as bad as not trial at all.” *United States v. Acevedo-Ramos*, 755 F.2d 203, 206 (1st Cir. 1985)

Advancing a trial before any party was able to conduct a deposition would normally be rash, but in this case taking testimony in court with a judge present is the only way for me to take testimony without unreasonably obstructive harassment. Without relief, lawyers will continue to be too scared to represent me, witnesses will have trouble giving their best testimony, and preoccupation with Kearney’s harassment will prevent me from effectively prosecuting Meta’s claims.

“The right to meaningful opportunity to be heard within limits of practicality must be protected against denial by particular laws that operate to jeopardize it for particular individuals.” *Boddie v. Connecticut*, 401 U.S. 371, 91 S. Ct. 780, 28 L. Ed. 2d 113 (1971) (“Due process requires, at minimum, that absent countervailing state interest of overriding significance, persons forced to settle their claims of right and duty through the judicial process must be given meaningful opportunity to be heard.” i.d.)

“[T]he constitutional violation alone, coupled with the damages incurred, can suffice to show irreparable harm.” *American Trucking v. City of Los Angeles*, 559

F.3d 1046, 1058 (9th Cir. 2009) (“constitutional violations cannot be adequately remedied through damages”) id., at 1059

Notably Kearney threatened and punished witnesses while the District Court case was proceeding and this appeal was imminent, obviously another lawsuit will be filed soon if this court doesn’t find a meritorious reason for approving of Kearney’s threats and harassment. “A court may exercise jurisdiction over a case that would otherwise be moot if the case is capable of repetition but evading review.” *Friends of the Earth, Inc. v. Laidlaw Ent’l Serv., Inc.*, 528 U.S. 167, 190, 120 S.Ct. 693, 145 L.Ed.2d 610 (2000).

The exception to the mootness doctrine applies when: "(1) the duration of the challenged action is too short to allow full litigation before it ceases, and (2) there is a reasonable expectation that the plaintiffs will be subjected to [the offending conduct] again." *Greenpeace v. Franklin*, 14 F.3d 1324, 1329 (9th Cir.1993) see also *Natural Resources Defense Council, Inc. v. U.S. Dept. of Interior*, 13 F. App’x 612, 619 (9th Cir. 2001)

Likelihood of success on the merits

1985(2)(i) does not require class-based animus

The District Court mischaracterized the conspiracies as being related to Plaintiff’s political beliefs, rather than to intimidate witnesses in a federal proceeding. The District Court wrote, “the plaintiff must allege defendants were

motivated by class-base animus. See *Bretz v. Kelman*, 773 F.2d 1026, 1029–30 (9th Cir. 1985) (“[W]e read the ‘equal protection’ language of the *second clause* of § 1985(2) to require an allegation of class-based animus for the statement of a claim under that clause”) *Walker v. Clark*, 53 Fed. App’x 804, 806 (9th Cir. 2002)” emphasis added.

However as argued in the TRO motion on pages 15 and 16, and in the *Bretz* case the District Court cited, “in *Kush v. Rutledge*, 460 U.S. 719, 103 S.Ct. 1483, 75 L.Ed.2d 413 the Supreme Court held that *no allegations of racial or class-based animus were required* to state a claim *under the first clause* of § 1985(2), which proscribes conspiracies to interfere with the administration of justice in *the federal courts*. The reasoning of the Supreme Court in *Kush*, however, as well as that in *Griffin*, supports our conclusion that class-based animus is an essential part of a cause of action under the second clause of § 1985(2).” *Supra Bretz* at 1028, see also *Portman v. County of Santa Clara*, 995 F.2d 898, 909 (9th Cir. 1993); see also Cong. Globe, 42d Cong., 1st Sess., 567 (1871), (where the Senator that added protection in federal courts noted that the two sections were separate, and wrote equal protection of the laws was required in state courts, not federal courts.)

The judge's characterization of a conspiracy to send heinous threats to intimidate and punish witnesses and a party to obstruct a federal proceeding under the first clause of § 1985(2)(i)) as being a politically motivated conspiracy in a state

proceeding under the second clause of § 1985(2), is like mistaking a poisonous apple for a banana in a fruit basket. Just as bananas and apples have distinct appearances, flavors, and textures, the allegation of witness intimidation and obstruction of justice differs significantly from a claim of political motivation, and requires less elements to state a claim. “An error is plain when it is ‘clear’ or ‘obvious’ under the law.” *United States v. Perez*, 116 F.3d 840, 846 (9th Cir. 1997) This error was critical because it was the Court’s sole intelligible reason for dismissing the first three counts in the complaint.

Mischaracterizing the complaint as politically motivated is not only offensively inaccurate but also overlooks the critical points of the allegation and can lead to a misinterpretation of the case's essence and prevent due process in this Circuit. It is crucial to scrutinize the complaint's specifics to ensure a fair and precise understanding of the case.

1985(2) Legal Standard

“Section 1985(2), in relevant part, proscribes conspiracies ‘to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified.’ If one or more persons engaged in such a conspiracy ‘do, or *cause* to be done, any act in furtherance of the object of such

conspiracy, ... the party so injured ... may have an action for the recovery of damages occasioned by such an injury ... against *any one* or more of the conspirators.'" *Head v. Wilkie*, 936 F.3d 1007, 1010 (9th Cir. 2019) quoting 42 U.S.C. § 1985(2) and 42 U.S.C. § 1985(3) emphasis added

Count 1 42 U.S.C. § 1985(2)(i)

Kearney's involvement in the conspiracy has never been disputed, and if he possessed any evidence that could exonerate him, I would be aware of it. It is irrefutable that he is guilty. (Affidavit at 2) (FAVC ¶ 86, ¶ 89-91, ¶ 95, ¶ 97) See also, *Rian Waters Vs. Aidan Kearney*, SJC-13373 (consolidated appeal of the State's unintelligible refusal to issue a criminal complaint over obvious undenied crimes.) The Court "may take judicial notice of court filings and other matters of public record." *Reyn's Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746 n.6 (9th Cir. 2006)

Kearney's statements in the BlogDat group chat requesting his Conspirators to send screenshots of the fake threats, and confidently saying how long the profile existed for, and implying that the reasoning behind the conspiracy in the BlogDat group chat are plainly admissible under the hearsay exception 801(d)(2)(E).

Kearney tried to keep his conspirators abreast by telling them that there was nothing to worry about because "I'm the one who did it." (Exhibit D 3) (FAVC ¶ 55) "[S]tatements made to keep coconspirators abreast of an ongoing conspiracy's

activities satisfy the ‘in furtherance of’ requirement” of 801(d)(2)(E). U.S. v. Williams, 989 F.2d 1061, 1068 (9th Cir. 1993)

It can be inferred that Kearney sent the November 19th, 2021, threats, because the conspiracy happened the same day that he defaulted in the First Circuit. FAVC ¶ 35 “The timing of the defendant's actions makes it more, rather than less, likely that he was trying to intimidate the witness.” Commonwealth v. Robinson, 444 Mass. 102, 109, 825 N.E.2d 1021 (2005).

Even assuming *arguendo* that Kearney has been hiding exculpatory specific facts proving that he did not send the threats, Aidan Kearney definitely conspired by presenting evidence that he knew to be fabricated and giving perjured oral testimony in attempt to mislead the judge into thinking that I threatened to rape and murder his children. ER 17 at 50-53 “[I]n this case involving direct evidence of fabrication, Plaintiff was not required to show that [the Defendants] actually or constructively knew that he was innocent.” Spencer v. Peters, 857 F.3d 789, 800 (9th Cir. 2017)

There is a long-documented pattern of Kearney sending threats and intimidating witnesses, (FAVC *passim*) and Kearney says attacking children is the best way to get pro se litigants to drop lawsuits. ER 14 at 31

Count 2 42 U.S.C. § 1985(2)(i)

Aidan Kearney knew that I was going to try to get the Supreme Court to appeal the First Circuit’s refusal to collaterally investigate the Count I conspiracy in my

Petition for Writ of Certiorari, ER 27 at 116-121, which Cristina Yakimowsky was a primary witness for. ER 18 at 56-58

Kearney's threats successfully scared her into not being willing to testify without a subpoena, and Kearney knew when he sent the threats that it would prevent me from presenting an effective case in the Supreme Court. ER 27 at 121; ER 30 at 140 Kearney and Meta knew that Kearney's harassment had caused an adjustment disorder, and Kearney noted in the beginning of his threats that Yakimowsky knew him, and that she should know that he was going to retaliate. It is important to "consider the unique sensitivity of the recipient." U.S. v. Fulmer, 108 F.3d 1486, 1491 (1st Cir. 1997)

Kearney at a minimum conspired with WDM by conspiratorial design, in that he intentionally weaponized WDM, so that his followers would routinely harass whoever he targeted, and that Kearney did the conspiracy using WDM's assets knowing that as a defunct company it would be difficult for a plaintiff to hold him liable and reach the assets. ER 20 at 65-68; ER 32 at 156-57

Meta Kearney Conspiracy

"To prove a civil conspiracy, the plaintiff must show that the conspiring parties reached a unity of purpose or a common design and understanding, or a meeting of the minds in an unlawful arrangement." Gilbrook v. City of Westminster, 177 F.3d 839, 856-57 (9th Cir. 1999) "Asking for plausible grounds to infer an agreement

does not impose a probability requirement at the pleading stage; it simply calls for enough fact to raise a reasonable expectation that discovery will reveal evidence of illegal agreement. And, of course, a well-pleaded complaint may proceed even if it strikes a savvy judge that actual proof of those facts is improbable, and ‘that a recovery is very remote and unlikely.’” *Bell Atl. Corp. v Twombly*, 550 U.S. 544, 556 (2007) A conspiratorial agreement between Kearney and Facebook can be inferred because Kearney discussed paying for a guarantee that his accounts would not be suspended with two Facebook employees. (FAVC ¶ 16; FAVC ¶ 146) Meta was legally aware that Kearney was breaking several of their rules that Facebook said were meant for safety, FAVC ¶ 29, and with that knowledge Facebook emboldened Kearney by allowing him to continue to post after his accounts were suspended. FAVC ¶ 18-19 Therefore, Facebook acted with deliberate indifference by “recognize[ing] an unreasonable risk and actually intended to expose [the Plaintiff] to such risks without regard to the consequences.” *Hernandez v. City of San Jose*, 897 F.3d 1125, 1135 (9th Cir. 2018)

With consideration to the surrounding circumstances and timing, Facebook’s decisions to delete my Facebook account shortly after the November 19th conspiracy, (FAVC ¶ 22) and decision to oppose a two-minute investigation into Kearney’s November 19th conspiracy, (FAVC ¶ 26) justifies an inference of agreement and complicity. FAVC ¶ 147-49

“A defendant's knowledge of and participation in a conspiracy may be inferred from circumstantial evidence and from evidence of the defendant's actions.” *Gilbrook v. City of Westminster*, 177 F.3d 839, 856-57 (9th Cir. 1999) “[W]hen the entire sequence of events in the complaint is considered in context, what might otherwise appear to have been coincidental parallel conduct on its own becomes ‘suggestive of illegal conduct’ and is thus sufficient to survive a motion to dismiss.” *Park v. Thompson*, 851 F.3d 910, 929 n.22 (9th Cir. 2017) “[A]n act done for a legitimate purpose in furtherance of a conspiracy may, together with other evidence, be evidence of a conspiratorial purpose.” *United Steelworkers of Am. v. Phelps Dodge*, 865 F.2d 1539, 1547 (9th Cir. 1989) “Even evidence of a slight connection to the conspiracy is sufficient to convict a defendant of knowingly participating in an established conspiracy.” *U.S. v. Ortega*, 203 F.3d 675, 684 (9th Cir. 2000) “To be liable, each participant in the conspiracy need not know the exact details of the plan, but each participant must at least share the common objective of the conspiracy.” *Mendocino Env't Ctr. v. Mendocino Cty.*, 192 F.3d 1283, 1302 (9th Cir. 1999) Facebook obviously wanted to win the lawsuit even at the cost of my health and due process rights. Notably Facebook would be an accessory after the fact if they had reason to believe that I sent the threats but still deleted my account.

18 U.S. Code § 3; Penal Code § 32 FAVC ¶ 138

42 U.S.C. § 1986 Legal Standard

“Every person who, *having knowledge* that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, *and having power to prevent or aid in preventing* the commission of the same, *neglects or refuses* so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented...” 42 U.S.C. § 1986

The 42nd Congress certainly intended for the bill to reach the powerful property owners of the time that like Meta, who had the power to stop the outrages but failed to act. “Let the wronged men of the South bring the respectable citizens who countenance these outrages, who could stop them at any moment, whose word would disband these masked midnight marauders, into the Federal courts, and make them answer from their pockets for all the losses. And when we do this, I believe we shall see the end of this miserable business.” Mr Pratt Cong. Globe, 42d Cong., 1st Sess., 506 (1871)

Meta’s Knowledge and power to prevent

Meta had knowledge of the conspiracies through their role as a party in the obstructed court cases. “Each party to litigation is deemed bound by the acts of his attorney-agent and is considered to have notice of all facts, notice of which can be charged upon the attorney.” *Link v. Wabash R. Co.*, 370 U.S. 626, 627 (1962) While

it is true that both law enforcement and the courts should have investigated and stopped Kearney's misconduct, that does not change the fact that Meta had legal knowledge that conspiracies to obstruct a case that they were involved in, was taking place on their platform, and Meta was a person with the power to confirm Yakimowsky's evidence was genuine and thereby could have stopped the effects or prevented Kearney's conspiracies and threats.

§ 1985(2)/ § 1986 damages

The district court erred by ignoring more recent case law addressing what type of injury suffices to bring a section 1985(2) claim. *Head v. Wilkie*, 936 F.3d 1007, 1008 (9th Cir. 2019) The conspiracies violated my due process rights and caused mental anguish and community intimidation by confirming that it was too dangerous to have witnesses without protection. ER 31 at 151-152, ER 32 at 158-160, ER 33 at 167-168 The Defendants' acts critically stressed my adjustment disorder making me unable to work, eat, or sleep in a reasonable fashion. (Affidavit 6-7) "[t]he gist of the wrong at which § 1985(2) is directed is not deprivation of property, but intimidation or retaliation against witnesses in federal-court proceedings." *Id.* By recognizing a witness's injury as cognizable because of the statute's goal of guarding against undue influence in court proceedings, Haddle has logically abrogated David's limitations on the type of injury that suffices for a claim under section 1985(2)" *Head v. Wilkie*, 936 F.3d 1007, 1012 (9th Cir. 2019) "The [Supreme] Court

pointed out that the terms ‘injured in his person or property’ in the statute refer to traditional principles of tort law,” *Id.*, at 1011, citing *Haddle v. Garrison*, 525 U.S. 121, 127 (1998)

Count 4 & 5

The only stated reason in the court's decision to deny these claims, was simply because the Defendants were not state actors, and the Court focused on a single fact out of many different facts relating to different state action theories.

However, “[p]rivate parties involved in such a conspiracy may be liable under section 1983.” *United Steelworkers of Am. v. Phelps Dodge*, 865 F.2d 1539, 1540 (9th Cir. 1989) see also *Adickes v. Kress Co.*, 398 U.S. 144, 152 (1970) “The determination of whether a nominally private person or corporation acts under color of state law is a matter of normative judgment, and the criteria lack rigid simplicity. Courts must engage in sifting facts and weighing circumstances to answer what is necessarily a fact-bound inquiry. Indeed, no one fact can function as a necessary condition across the board ... nor is any set of circumstances absolutely sufficient.” *Pasadena Republican Club v. W. Justice Ctr.*, 985 F.3d 1161, 1167 (9th Cir. 2021) citations omitted “[L]ower courts [are directed] to take a *case-by-case* approach...” *Burton v. Wilmington Parking Auth.*, 365 U.S. 715, 722 (1961) emphasis added; see also *Howerton v. Gabica*, 708 F.2d 380, 383 (9th Cir. 1983) “It is not enough to examine seriatim each of the factors upon which a claimant relies and to dismiss

each individually as being insufficient to support a finding of state action. It is the *aggregate* that is controlling.” Jackson v. Metropolitan Edison Co., 419 U.S. 345, 95 S.Ct. 449, 42 L.Ed.2d 477 (1974) Emphasis added. “The satisfaction of any one test is sufficient to find state action, but at bottom, the inquiry is always whether the defendant has exercised power possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law.” Pasadena Republican Club v. W. Justice Ctr., 985 F.3d 1161, 1167 (9th Cir. 2021)

The judges handling the fact bound state-action question, disagreeing with a single fact out of several facts that applied to different legal standards, was like someone plucking a Kiwi out of a fruit basket, and saying the rest of the basket is worthless because “I say that this kiwi is not ripe enough.” No one could contend that that was a liberal evaluation of a pro se basket of state action facts.

If necessary, I am a class of one in that numerous Massachusetts courts and police unintelligibly enabled and encouraged threats and crimes against me by approving of heinous threats without any rational basis. ER 34 at 171 “Our cases have recognized successful equal protection claims brought by a class of one, where the plaintiff alleges that [they have] been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment. In so doing, we have explained that the purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the State's jurisdiction

against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents.” Village of Willowbrook v. Olech, 528 U.S. 562, 564 (2000) citations omitted see also, Konarski v. Rankin, No. 13-17384, 3 (9th Cir. 2015)

1983 Constitutional Violation Due Process

“Every person has a fundamental right to liberty in the sense that the Government may not punish him unless and until it proves his guilt beyond a reasonable doubt at a criminal trial conducted in accordance with the relevant constitutional guarantees.” Chapman v. United States, 500 U.S. 453, 465, 111 S. Ct. 1919, 1927, 114 L. Ed. 2d 524 (1991) “Certainly where the State attaches a badge of infamy to the citizen, due process comes into play.” Wisconsin v. Constantineau, 400 U.S. 433, 437 (1971) (quotations omitted.) The "right to be heard before being condemned to suffer grievous loss of any kind, even though it may not involve the stigma and hardships of a criminal conviction, is a principle basic to our society." Mathews v. Eldridge, 424 U.S. 319, 333 (1976)

“It may be that it is the obnoxious thing in its mildest and least repulsive form; but illegitimate and unconstitutional practices get their first footing in that way, namely, by silent approaches and slight deviations from legal modes of procedure. This can only be obviated by adhering to the rule that constitutional provisions for the security of person and property should be liberally construed. A close and literal

construction deprives them of half their efficacy, and leads to gradual depreciation of the right, as if it consisted more in sound than in substance. It is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon.” *Coolidge v. New Hampshire*, 403 U.S. 443, 454, 91 S. Ct. 2022, 2031, 29 L. Ed. 2d 564 (1971), holding modified by *Horton v. California*, 496 U.S. 128, 110 S. Ct. 2301, 110 L. Ed. 2d 112 (1990)

Kearney’s fabricated threats will be recirculated through the internet forever, and because of this conspiracy there will now always be people that assume that I threatened to rape and murder children, “in this case involving direct evidence of fabrication, Plaintiff was not required to show that [the Defendants] actually or constructively knew that he was innocent.” *Spencer v. Peters*, 857 F.3d 789, 800 (9th Cir. 2017) Even in the unlikely scenario that Kearney did not fabricate the threats, he made false statements in court to make me look guilty. “[D]eliberately falsifying evidence in a child abuse investigation and including false evidentiary statements in a supporting declaration violates constitutional rights where it results in the deprivation of liberty or property interests, be it in a criminal or civil proceeding.” *Costanich v. Dept. of Social Ser*, 627 F.3d 1101, 1115 (9th Cir. 2010)

The Supreme court decided that a sex offender registry was not punitive because they were not doing exactly what the Defendants are doing in this case. *Smith v. Doe*, 538 U.S. 84, 99 (2003) (“The State's Web site does not provide the public with

means to shame the offender by, say, posting comments underneath his record. An individual seeking the information must take the initial step of going to the Department of Public Safety's Web site”) As the court noted the registration only comes after a conviction, while in this case, “the State has no such punitive interest. As [I] was not convicted, [I] may not be punished.” *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992) “[P]rior to an adjudication of guilt in accordance with due process of law.” *Bell v. Wolfish*, 441 U.S. 520, 535 (1979)

“The target[s] of public shaming lose their jobs, and those not yet targeted adjust their own public and perhaps even private speech to avoid being the next national pariah. In a regime where both financial and social possibilities hinge on employment, to be rendered not just temporarily unemployed but unemployable is a fate not substantially better than imprisonment. Social media can punish those deemed offensive more severely than any formal sentence for a speech violation ever could in the United States. The best strategy for most reasonably risk-adverse people will hit upon to deal with this ominous threat to their livelihoods is to shut up.” Koganzon, Rita. “The Politics of Digital Shaming.” *The New Atlantis*, no. 45, 2015, pp. 118–26. At 124

“In determining whether a provision of the Constitution applies to a new subject matter, it is of little significance that it is one with which the framers were not familiar. For in setting up an enduring framework of government they undertook to

carry out for the indefinite future and in all the vicissitudes of the changing affairs of men, those fundamental purposes which the instrument itself discloses.” *Bell v. Maryland*, 378 U.S. 226, 315 (1964)

Joint Action

Aidan Kearney's access to the registry of motor vehicles database, and ability to instantly search criminal and family court dockets shows that he is empowered with state resources, and made these conspiracies severely effective. ER 22 at 70-73 “[T]he rationing of otherwise freely accessible recreational facilities creates a stronger case for state action than if the facilities are simply available to all comers without condition or reservation.” *Gilmore v. City of Montgomery*, 417 U.S. 556, 574, 94 S.Ct. 2416, 2426, 41 L.Ed.2d 304 (1974)

Aidan Kearney’s public shaming operation is dependent on police and other state actors sending him information that is not available to the public. “[W]hen private individuals or groups are endowed by the State with powers or functions governmental in nature, they become agencies or instrumentalities of the State and subject to its constitutional limitations.” *Evans v. Newton*, 382 U.S. 296, 299 (1966) “[T]he government's active involvement with the media's news gathering activities, and the mutually-derived benefits, is more than enough to make the media government actors.” *Berger v. Hanlon*, 129 F.3d 505, 515 (9th Cir. 1997)

Kearney has a symbiotic relationship in that he uses the weaponized assets to influence congress to give police financial benefits. ER 22 at 74-76 “[S]ubstantial coordination and significant financial integration between the private party and government are hallmarks of a symbiotic relationship.” Pasadena Republican Club v. W. Justice Ctr., 985 F.3d 1161, 1168 (9th Cir. 2021)

Additionally, several police departments following WDM/Kearney on Twitter, ER 22 at 75 shows that the State “has provided such significant encouragement, either overt or covert, that the choice must in law be deemed to be that of the State.” Blum v. Yaretsky, 457 U.S. 991, 1004 (1982)

Kearney's not making up numbers out of thin air when he says that 99% of police and 90% of court clerks support him. ER 23 at 80 Kearney gets emails all the time from police and court officials, particularly in Massachusetts, who sent him stories that technically violate the individuals due process rights. ER 22 at 72 “Outsourcing has come into vogue at all levels of government as a means of cutting costs; but farming out public functions to private contractors does not relieve state or local governments of their Fourteenth Amendment obligation[s]” Dunn v. Washington County Hosp, 429 F.3d 689, 695 (7th Cir. 2005) dissenting opinion

Judicial conspirators and State inaction

The conspiracies would not have happened without the unintelligible approval of Kearney’s obvious and spelled out violations of the state’s witness intimidation laws

in four district court cases, ER 23 at 82-91, ER 25 at 98-101, and the fact that they denied an explanatory memorandum without reason, is more than enough to infer a state action conspiracy for the purposes of section 1983. “[P]rivate parties who corruptly conspire with a judge in conjunction with the judge's performance of an official judicial act are acting under color of state law for the purpose of § 1983, even if the judge himself is immune from civil liability.” *Kimes v. Stone*, 84 F.3d 1121, 1126 (9th Cir. 1996) see also *Dennis v. Sparks*, 449 U.S. 24, 29 (1980) “State courts that aid private parties to perform [constitutional violations] implicate the State in conduct proscribed by the Fourteenth Amendment.” *Evans v. Newton*, 382 U.S. 296, 302 (1966) “Evidence that police failed to exercise independent judgment will support an inference of conspiracy with a private party.” *Gilbrook v. City of Westminster*, 177 F.3d 839, 857 (9th Cir. 1999) citation omitted. “[I]ntent is not at issue where intimidation or coercion is obvious” *Park v. Thompson*, 851 F.3d 910, 920 (9th Cir. 2017)

Judge Michael Callan unintelligibly cancelling the witness subpoena that it had issued for Kearney after an ex parte conversation with Kearney, (ER 24 92-94) is certainly enough fact to infer that the decision was conspiratorial. “The Supreme Court has established that the government violates due process when its conduct ‘effectively dr[ives a] witness off the stand.’” *Park v. Thompson*, 851 F.3d 910, 919

(9th Cir. 2017) citing *Webb v. Texas*, 409 U.S. 95, 98, 93 S.Ct. 351, 34 L.Ed.2d 330 (1972)

Kearney frequently has *ex parte* conversations with judges shortly before they make unintelligible decisions. (ER 23 at 87-89; ER 24 at 93-97; ER 35 at 179, ER 36 at 187) Where a Defendant “enters into an extra-judicial agreement with a judge, the fraudulent court proceedings circumvent the due course of justice, and are the basis for a claim of a procedural due process violation” *Elwood v. Drescher*, 90 F. App'x 501, 504 (9th Cir. 2004)

“Immunity granted to a class, however limited, having the effect to deprive another class, however limited, of a personal or property right, is just as clearly a denial of equal protection of the laws to the latter class as if the immunity were in favor of, or the deprivation of right permitted worked against, a larger class.” *Universal Adjustment Corp. v. Midland Bank, Ltd.*, 281 Mass. 303, 306 (1933)

In many cases there is "no quarrel with the state laws on the books, instead, the problem is the way those laws are or are not implemented by state officials.” *Zinerman v. Burch*, 494 U.S. 113, 124-25 (1990) “Denying includes inaction as well as action. And denying the equal protection of the laws includes the omission to protect, as well as the omission to pass laws for protection. These views are fully consonant with this Court's recognition that state conduct which might be described as ‘inaction’ can nevertheless constitute responsible ‘state action’ within the

meaning of the Fourteenth Amendment.” *Bell v. Maryland*, 378 U.S. 226, 309-11 (1964)

I have gone to all the appropriate police departments more than once to address witness intimidation from Kearney, (ER 22 at 73) and the only helpful answer I ever got was to file criminal complaints. “[T]here is a constitutional right to have police services administered in a nondiscriminatory manner a right that is violated when a state actor denies such protection to disfavored persons.” *Elliot-Park v. Manglona*, 592 F.3d 1003, 1007 (9th Cir. 2010) “A State denies equal protection whenever it fails to give it. Denying includes inaction as well as action.

“Whenever, then, there is a denial of equal protection by the State, the courts of justice of the nation stand with open doors, ready to receive and hear with impartial attention the complaints of those who are denied redress elsewhere. Here may come the weak and poor and downtrodden, with assurance that they shall be heard. Here may come the man smitten with many stripes and ask for redress. Here may come the nation, in her majesty, and demand the trial and punishment of offenders, when all, all other tribunals are closed. In what other aspect does the power of this nation shine with more benignity! How much better this than the array of armed men, the suspension of civil process, the dread alternative of force!” Mr. Coburn Cong. Globe, 42d Cong., 1st Sess., 459 (1871)

Bivens Federal Action

Just like the Chief Justice did, Massachusetts Federal District court approved of heinous threats without any reason, and waited until it dismissed the complaint to deny preliminary injunctions without any reason, that I had claimed were necessary in order to fully present my claims and fairly collect evidence. (ER 25 at 103-04) just like the Chief Justice did, the Massachusetts court *sua sponte* ignored more than half my state action facts and decided, (ER 25 106) “Plaintiff’s claim for a conspiracy in violation of 42 U.S.C. § 1985 fails because he does not allege any facts supporting an agreement by the parties to deprive him of equal protection of the law based on his membership in a protected class.” *Waters v. Facebook, Inc.*, No. CV 20-30168-MGM, 2021 WL 3400607, at *2 (D. Mass. May 11, 2021)

In my Rule 59e motion I cited *Kush* and the ignored state action facts, but the court *sua sponte* decided that I was not allowed to raise arguments in response to the court’s *sua sponte* decision, even though I had no prior notice of the courts intent to dismiss or the court’s obviously wrong reasoning. ER 26 at 108

“[T]he standards utilized to find federal action . . . are identical to those employed to detect state action” *Sutton v. Providence St. Joseph Medical Center*, 192 F.3d 826, 835 (9th Cir. 1999) The “aberrant procedure surrounding” *Mastroni’s sua sponte* decisions’ “would support a justifiable inference of conspiracy.” *United Steelworkers of Am. v. Phelps Dodge*, 865 F.2d 1539, 1547 (9th Cir. 1989) I

presented specific facts that the “stated reasons for the termination were pretextual.”

Gilbrook v. City of Westminster, 177 F.3d 839, 857 n.9 (9th Cir. 1999)

42 USC 1983 damages

Damages from due process violations are easily proven in this case, “we foresee no particular difficulty in producing evidence that mental and emotional distress actually was caused by the denial of procedural due process itself. Distress is a personal injury familiar to the law, customarily proved by showing the nature and circumstances of the wrong and its effect on the plaintiff... denial of procedural due process itself is compensable under § 1983...” *Carey v. Piphus*, 435 U.S. 247, 263-64 (1978) In this case I have a lot of damages, but until a court follows the law, it will be too dangerous to list them. At minimum I suffered due process violations and I was diagnosed with adjustment disorder. ER 15 at 36 ER 27 at 121 “[T]he decision, if made by a professional, is presumptively valid.” *Youngberg v. Romeo*, 457 U.S. 307, 323 (1982)

Regardless, “[n]ominal damages must be awarded if a constitutional violation is established even if no actual injury is incurred or can be proven. A jury that believed [the Plaintiff] might also award him punitive damages.” *Rodney Cable v. City of Phx.*, No. 14-15037, 4 (9th Cir. 2016) citation omitted. see *Smith v. Wade*, 461 U.S. 30, 55 n.21 (1983) (“punitive damages may be the only significant remedy available

in some § 1983 actions where constitutional rights are maliciously violated but the victim cannot prove compensable injury")

“A jury may be permitted to assess punitive damages in a § 1983 action when the defendant's conduct involves reckless or callous indifference to the plaintiff's federally protected rights, as well as when it is motivated by evil motive or intent.” *Smith v. Wade*, 461 U.S. 30 (1983) (“If the plaintiff proves sufficiently serious misconduct on the defendant's part, the question whether to award punitive damages is left to the jury, which may or may not make such an award.”) i.d., at 52

Section 230 is useless for these claims

“[R]egardless of the type of claim brought, [Courts] focus on whether the duty the plaintiff alleges stems from the defendant's status or conduct as a publisher or speaker.” *Lemmon v. Snap, Inc.*, 995 F.3d 1085, 1091 (9th Cir. 2021) emphasis added. In this case Meta was a codefendant, so “the website provider was alleged to have known independently of the ongoing scheme beforehand, the CDA d[oes] not bar [the] action” *Homeaway.Com, Inc. v. City of Santa Monica*, 918 F.3d 676, 682 (9th Cir. 2019) “Though the defendant did, in its business, act as a publisher of third-party content, the underlying legal duty at issue did not seek to hold the defendant liable as a ‘publisher or speaker’ of third-party content.” i.d.,

Meta Platforms INC., is empowered with federal law by Section 230, as they would not have thought they could violate constitutional rights at all, let alone on

this scale without the federal provided power. (ER 15 at 34, 190) The Constitution does not have exceptions that says the government can only violate constitutional rights if billion-dollar companies create an undetectable back-door. “Section 1983 creates a species of tort liability that, on its face, admits of no immunities.” *Wyatt v. Cole*, 504 U.S. 158, 163 (1992) citation omitted. “The constitution is superior to any ordinary act of the legislature, the constitution, and not such ordinary act, must govern the case to which they both apply.” *Marbury v. Madison*, 5 U.S. 137, 178 (1803) “The Supremacy Clause provides that: ‘This Constitution, and the Laws of the United States which shall be made in Pursuance thereof... shall be the supreme Law of the Land...’” *American Trucking v. City of Los Angeles*, 559 F.3d 1046, 1053 (9th Cir. 2009) quoting U.S. Const. art. VI, cl. 2. “[S]tate courts have the solemn responsibility equally with the federal courts to safeguard constitutional rights.” *Burt v. Titlow*, 571 U.S. 12, 19, 134 S. Ct. 10, 15, 187 L. Ed. 2d 348 (2013)

“A statute or a rule may be held constitutionally invalid as applied when it operates to deprive an individual of protected right although its general validity as measure enacted in the legitimate exercise of state power is beyond question.” *Boddie v. Connecticut*, 401 U.S. 371, 91 S. Ct. 780, 28 L. Ed. 2d 113 (1971) “[E]very reasonable construction must be resorted to, in order to save a statute from unconstitutionality.” *Chapman v. United States*, 500 U.S. 453, 464, 111 S. Ct. 1919, 1927, 114 L. Ed. 2d 524 (1991) “When new insight reveals discord between the

Constitution's central protections and a received legal stricture, a claim to liberty must be addressed.” *Obergefell v. Hodges*, 576 U.S. 644, 664, 135 S. Ct. 2584, 2598, 192 L. Ed. 2d 609 (2015)

“[N]o one has constitutional protection in engaging in organized crime or in corrupt practices in government.” *Sheridan v. Gardner*, 347 Mass. 8, 17 (1964) “No conduct has such an absolute privilege as to justify all possible schemes of which it may be a part. The most innocent and constitutionally protected of acts or omissions may be made a step in a criminal plot, and if it is a step in a plot neither its innocence nor the Constitution is sufficient to prevent the punishment of the plot by law.” *Aikens v. Wisconsin*, 195 U.S. 194, 205-206 (1904)

The balance of equities overwhelmingly favors plaintiff

Aidan Kearney has not formally opposed an injunction in any Federal Court, and neither Kearney nor any court has argued that Kearney would suffer harm by granting me an injunction protecting witnesses. Kearney does not have a First Amendment right to intimidate witnesses and deny my right to a fair trial. “The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.” Ninth Amendment

“Reasonable time, place, and manner regulations are permissible, and a content-based prohibition must be narrowly drawn to effectuate a compelling state interest.” *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 38 (1983)

While considering exceptions to Section 230, Justice Kavanaugh was recently quoted as saying “Lawsuits will be nonstop” in the Gonzalez v. Google case, but if justice is not served the outrages will continue to be non-stop. “Civil liberties, as guaranteed by the Constitution, imply the existence of an organized society maintaining public order without which liberty itself would be lost in the excesses of unrestrained abuses.” Cox v. State of New Hampshire, 312 U.S. 569, 574, 61 S. Ct. 762, 765, 85 L. Ed. 1049 (1941)

Relief is in the public’s interest.

Instances of witness intimidation not only harm the individuals targeted but also erode public trust in law enforcement and the justice system. The vicious cycle of gang witness intimidation and resulting due process violations must be broken to allow the police to safely and effectively gather evidence and prevent further criminal and unconstitutional behavior. As the Supreme Court stated in Hazel-Atlas Co. v. Hartford Co., 322 U.S. 238, 246 (1944), “The public welfare demands that the agencies of public justice be not so impotent that they must always be mute and helpless victims of deception and fraud.” “[B]oth defendants and the public have an interest in a system that is fair and reliable” United States v. Ghailani, 733 F.3d 29, 41-42 (2d Cir. 2013)

If what Kearney is doing is acceptable, then why wouldn’t every major police station follow Massachusetts’s lead and use public shaming and organized threats

for intimidating exculpatory witnesses? Or if what Kearney did was okay, why wouldn't anybody involved in a massive civil or criminal case use Kearney's tactics to destroy the livelihoods of every witness and lawyer in that case?

The reason why no court has ever come up with an excuse for why Kearney is innocent or why the threats are acceptable, is because there is none.

Moreover, online harassment is a growing problem that affects a significant portion of the American population. A PEW research study "The State of Online Harassment" (January 2021) found that 41% of Americans have experienced online harassment, and 25% had experienced the more extreme types of harassment "which encompasses physical threats, stalking, sexual harassment and sustained harassment." This number was up from 15% in 2014, and 18% in 2017.

If the requested relief is denied, Kearney will be emboldened to continue his attacks and threats, and may even try to frame the Plaintiff again for more crimes. Such an outcome would be unacceptable and could have dire consequences for the safety and well-being of not only the Plaintiff but also the public at large. "Justice is the end of government. It is the end of civil society. It ever has been, and ever will be pursued, until it be obtained or until liberty be lost in the pursuit. In a society, under the forms of which the stronger faction can readily unite and oppress the weaker, anarchy may as truly be said to reign, as in a state of nature where the weaker

individual is not secured against the violence of the stronger.” The Federalist, ed. 1864, No. 51, p. 401.

While I hoped for the best, I am prepared for the worst. If this court denies me relief without a meritorious legal excuse, both Kearney and Meta will be devastated by written poetic justice. See Mass. Const. pt. 1 art. I (Citizens have a right to defend their safety, prosperity, and happiness when the Government is too impotent to do so.) “The U.S. Constitution did not displace such laws, U.S. Const. amend. X, except where it did so expressly.” *Young v. Hawaii*, 992 F.3d 765, 815 (9th Cir. 2021) “The highest privilege of a man is the formation of character. But the most comprehensive privilege of the citizen is the pursuit of happiness.” Mr. Frelinghuysen. Cong. Globe, 42d Cong., 1st Sess., 500 (1871)