

APPLICABLE LEGAL STANDARDS

Federal Rule of Civil Procedure 59(e) provides that a motion to alter or amend a judgment “must be filed no later than 28 days after the entry of the judgment.” Fed. R. Civ. P. 59(e). A motion under Rule 59(e) “asks the court to modify its earlier disposition of a case because of an allegedly erroneous legal result.” Feinstein v. Moses, 951 F.2d 16, 19 n.3 (1st Cir. 1991) (quoting Lopez v. Corporacion Azucarera de Puerto Rico, 938 F.2d 1510, 1513 (1st Cir. 1991)). “A motion for reconsideration will be allowed if the movant shows a manifest error of law, newly discovered evidence or that the Court has made an error ‘not of reasoning but apprehension.’” Provanzano v. Parker View Farm, Inc., 827 F. Supp. 2d 53, 56 (D. Mass. 2011) (quoting Ruiz Rivera v. Pfizer Pharm., LLC, 521 F.3d 76, 81 (1st Cir. 2008)). Courts have “substantial discretion and broad authority to grant or deny a motion for reconsideration made pursuant to Fed. R. Civ. P. 59(e).” *Id.* Although the usual rule is that a party cannot raise new arguments on a Rule 59 motion, where a court raises an issue sua sponte that was not addressed by the parties, “[t]he customary circumstance in which a judge reviews a judgment under Rule 59(e) after both parties previously argued the points at issue does not apply.” McDermott v. Marcus, --F. Supp. 2d ---, 2013 WL 4539071, at *8 (D. Mass. Aug. 26, 2013) “In extreme cases, a court may protect public officials from harassment... by dismissing forma pauperis suits that are ‘frivolous or malicious,’ 28 U.S.C. § 1915(e)(2)” Educadores Puertorriquenos v. Hernandez, 367 F.3d 61, 67 (1st Cir. 2004)

ARGUMENT

The injunctive motions are not moot.

Even if the court does not alter or amend judgment as to the dismissal of the SAC, the injunctive motions (Docket #s 17, 71) are necessary so that I may be fairly heard in the Appellate/Supreme court. (SAC 84-86) Aidan Kearney's blog could cost a law firm millions of dollars in revenue loss using his routine harassment scheme. (Docket 71) Also, his blogs cause significant prejudicial damage to the eventual jury. Lastly if an injunction is approved, I would be a lot safer, and my income would significantly increase allowing me to be fairly heard.

State Action

The case the court cited to deny state action ironically showed that I did state a claim in the same sentence directly following the cited passage. "such as when a private party conspires with a state actor, Adickes v. Kress & Co., 398 U.S. 144, 152 (1970)" Klos v. Klos, Civil Action No. 20-10757-ADB, at *7-8 (D. Mass. Oct. 27, 2020) "Officer Jeremy Haley, Dr. Martha Smith-Blackmore, and at least one John doe conspired with Aidan Kearney to violate my due process rights after the criminal case was over by sending official information to Aidan Kearney." (SAC 145) see also (SAC 146) Current and former police officers have harassed and intimidated me on Turtleboy's Facebook and YouTube social media accounts" (SAC 23) "The involvement of a state official in such a conspiracy plainly provides the state action essential to show a direct violation of petitioner's Fourteenth Amendment equal protection rights, whether or not the actions of the police

were officially authorized, or lawful” Adickes v. Kress Co., 398 U.S. 144, 152 (1970) “For the reasons set forth above, and reasons currently unknown the Defendants should be considered as acting under the color of the law as the Defendants have received significant support/encouragement both overtly and covertly, and the state has willingly accepted the benefits of the Defendants’ schemes, and the State has intentionally tolerated the illegal conduct.” (SAC 25) see also (SAC 15-24, 137, 150, and 165.) “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) “Mindful of the fact-sensitive nature of the inquiry, [the Supreme Court] staunchly eschewed any attempt to construct a universally applicable litmus test to distinguish state action from private conduct. Instead, they have directed lower courts to take a case-by-case approach, sifting facts and weighing circumstances [so that] the nonobvious involvement of the State in private conduct [can] be attributed its true significance.’ Burton v. Wilmington Parking Auth., 365 U.S. 715, 722 (1961)

Diversity jurisdiction.

I respectfully requests that this Court revisit, pursuant to Fed. R. Civ. P. 59, the issue of jurisdiction over the state claims. The court “declined to exercise supplemental jurisdiction over [my] state law claims.” But the court said nothing about diversity jurisdiction. “Alternatively, diversity jurisdiction can also be invoked as the amount in

controversy exceeds 75,000 dollars, and the Defendants conduct business/advertise in Massachusetts making jurisdiction reasonable.” (SAC 4)

42 U.S.C. § 1985 Obstruction in a Federal Case

Conspiratorial agreement for §1985 and as indirectly required for § 1986, was alleged under penalties of perjury “Aidan Kearney, and several currently unknown parties conspired using secret groups on Facebook, and or Discord. (SAC 74) “This information is in the sole possession of the Defendants and therefore allowing discovery is appropriate.” Jellyman v. City of Worcester, 354 F. Supp. 3d 95, 100 (D. Mass. 2019) “If a party has the potential to stop illegal activity but fails to act to do so, and sits idly by, then that party may be said to have impliedly conspired in such illegalities. Moreover, the plaintiff is not required to prove exact details of the agreement. A showing of conspiracy must often be met by circumstantial evidence; conspirators rarely formulate their plans in ways susceptible of proof by direct evidence.” Hunt v. Weatherbee, 626 F. Supp. 1097, 1107 (D. Mass. 1986) I am not required to sue all the conspirators. "The party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any *one* or more of the conspirators." 42 U.S.C. Sec. 1985

The court made a clear error of law dismissing this 42 U.S.C. § 1985(2), using the 42 U.S.C. § 1985(3) standard. “No allegations of racial or class-based invidiously discriminatory animus are required to establish a cause of action under the first part of § 1985(2)” Kush v. Rutledge, 460 U.S. 719 (1983) “The Court's decision rested on the plain language of the statute and on the premise that congressional power therefor arose not from

the fourteenth amendment and notions of equality, but, rather, from specific federal power to protect the processes of federal courts and the exercise of federal rights.” Irizarry v. Quiros, 722 F.2d 869, 871 (1st Cir. 1983)

A week after Aidan Kearney found out about this Federal Case 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 ***** family, don't **** with me... **I'm not ***** playing defensive** and hiding anymore. **I'm going to burn your family to the ground** just understand that.” (SAC 79) While paragraphs 75, 76, and 78 of the SAC did occur before the federal case was filed, they were included in the § 1985(2) claim to show that Aidan Kearney knew his platform and social media accounts are weaponized, and he intentionally made them weaponized and used them to intimidate plaintiffs and discourage witnesses from participating in court cases against him. He was notably successful at intimidation, “it became too dangerous for me to present evidence or name witnesses in this instant case...” (SAC 43) “[Kearney] critically impaired me which delayed amending the complaint and prevented me from presenting my best arguments. Whenever I would look for dates of misconduct, the harassment stresses my adjustment disorder causing preoccupation related to the stressor and its consequences.” “... and makes me too afraid to bring in experts or more witnesses such as my business partners. Additionally, the obstruction made lawyers too afraid to take this case, and one law firm agreed to take the case if the status changes.” See SAC 84-86

Rooker-Feldman doctrine

In a footnote the court suggested that one of the claims “seeks relief from a state court judgment” I have no idea what claim the court is referring to, but the second and forth prong of the doctrine have no application. “(2) claims her injuries are caused by the state-court judgments issued in those actions (4) seeks review and rejection those judgments.” Linardon v. Wolohojian, CIVIL ACTION No. 20-10969-DJC, at *4 (D. Mass. Nov. 10, 2020) The claims in the state case did not involve conspiracies and were solely directed to Aidan Kearney and his single-member LLC’s. “Nor are we concerned that certain federal statutes already provide remedies for such injury... Passing any question of double recovery, this is not improper duplication. First, subsection 1985(2) applies to ‘conspiracies,’ not to individual actions.” Irizarry v. Quiros, 722 F.2d 869 (1st Cir. 1983) “This Court repeatedly has recognized that a conspiracy poses distinct dangers quite apart from those of the substantive offense.” Iannelli v. United States, 420 U.S. 770, 778 (1975).

Aidan Kearney’s blog is a weapon.

The court made an error in apprehension when it said that Aidan Kearney “ma[de] fun of Plaintiff in a blog post” or used “negative blog posts.” Five-pound paper weights and utility drones are not normally considered weapons, but when combined they can destroy or end a person’s life. Aidan Kearney trained his followers how to not get caught sending threats and how to maximize emotional distress by going after his subjects’ family and employers. (SAC 54, 75, 77-79, 156, 157, 170) It is irrelevant if I did not adequately explain to the court how Kearney has weaponized social media, Aidan Kearney admits

during interviews that his platform is a weapon (SAC 75), and it was brought in the claims (SAC 97, 122.)

Sua sponte dismissal is inappropriate.

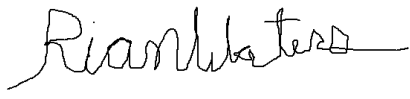
Especially in a case where the oppositions filed belied the courts arguments, and I have “expended considerable money and effort over the [last seven] months bringing [my] case to trial. To dismiss [my] case under a section of the U.S. Code entitled ‘Proceedings in forma pauperis’ after such a long stretch of proceeding as a nonpauper does not make sense. Sure, he was proceeding without paying the filing fee, but [I offered to pay the court back in the forma pauperis motion (Docket #2) and have spent over \$600, (see Docket #s 15,16,43,57,80) and hundreds of hours on the case] So the district court erred, we conclude, in using the mandatory dismissal language of § 1915(e)(2) to settle Hrobowski's case.” Hrobowski v. Commonwealth Edison Co., 203 F.3d 445, 448 (7th Cir. 2000)

Additionally, I have not been fairly heard as the harassment has prevented me from receiving representation (Docket #71 & SAC 86) and has caused me to suffer significant cognitive impairment and a plague of health problems. Had the court decided the TRO/PI in a reasonable time the Complaint would be significantly better, the docket would be much shorter, and the Defendants would have had less time to spoil evidence. On appeal I will argue that for the reasons just stated this court failed Cannon 3(4) of US code of conduct for judges, which requires the court to ensure that I am “fully heard.”

CONCLUSION

For all of the above reasons, the Plaintiff requests that this Motion be granted, and the Court amend its Order and Judgment in accordance with the above-requested relief.

Respectfully submitted by:

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