United States Court of Appeals

For the First Circuit

No. 21-1582 **RIAN G. WATERS,**

Plaintiff - Appellant,

v.

FACEBOOK, INC.; GOOGLE LLC; AIDAN KEARNEY,

Defendants - Appellees,

JEREMY HALEY; MARTHA SMITH-BLACKMORE; WILLIAM HIGGINS; JIM DALTON; MAURA TRACY HEALEY; JOHN DOES (1-10),

Defendants.

Blue Brief

Respectfully submitted by:

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Table Of Contents

Table of Contents

Table Of Authorities

Other Authorities

Lower Court's Prior Cases

Supreme Court Cases

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. (R.A 78) The District Court has supplemental jurisdiction over related claims arising under state law pursuant to 28 U.S.C. § 1367(a). Alternatively, the district court has diversity jurisdiction pursuant to 28 U.S.C. § 1332, as the State law claims are directed exclusively to citizens of different States. (R.A. 79)

This court of appeals has jurisdiction pursuant to 28 U.S. Code § 1291, as the district court made a final decision on May 11th, 2021, when it dismissed the entire complaint, and on July 22nd 2021 the court denied my Rule 59(e) Motion to Alter or Amend Judgment. The Notice Of Appeal was timely filed on July 29th 2021, and the filing fee was promptly paid on August 4th 2021.

Statement of the issues presented for review;

a. Whether the facts and claims in the SAC are sufficient to show that it is plausible that each individual Defendants' conduct was under the color of the law.

b. Whether the facts and claims in the SAC are sufficient to show that it is plausible that Kearney, Facebook, and Google conspired and/or knowingly provided substantial assistance to, (or for Section 1983 caused) any or all of the claims.

c. Whether dismissal with prejudice was an abuse of discretion.

d. Whether Section 230 must be read to provide immunity for any or all of the claims, and if it does, whether Section 230 is unconstitutional as applied.

e. Whether the Civil Rights Act provides a remedy for conspiracies with a political animus.

Statement Of The Case

Aidan Kearney (here on "Kearney") has intentionally weaponized social media by teaching people how to cause significant damage without consequences. (R.A. 89 at 77) Kearney primarily targets "Social Justice Warriors," which includes Black Lives Matter activists, LGBTQ activists, and people like myself that complained of misconduct by police or correctional officers. (R.A. 19 at 96; 35; 73 at 16; 104 at 170; 126 at 1;)

I sued Kearney in the state court after he wrote an article accusing me of criminal allegations, and he refused to look at my evidence. Katherine Peter conspired with Kearney by allowing him to publish several harassing articles in her name on the days leading up to court hearings. (R.A. 10 at 40-41; 98 at 125) Kearney also conspired with Michele Olson to obstruct the State case. (R.A. 8 at 29-32) Kearney threatened my roommate (R.A. 13 at 54) and used his blog to harass the first person willing to be my witness. (R.A. 33-35) Kearney also threatened to harass anyone that hired me. (R.A. 102 at 157) In January 2019 Facebook allowed me to

provide context to reports of violations, (R.A. 85 at 50) and after I mentioned the court case they suspended three of Kearney's accounts. But soon after they changed their design making it impossible to report or explain witness intimidation and or civil rights violations on their platform. (R.A 86 at 55) They also gave Kearney special privileges that allow him to post content that violates their safety rules with near impunity. (ADD 28 at 5)

The harassment gave me an adjustment disorder critically impairing my ability to represent myself and prevented me from presenting my best evidence. (R.A. 84 at 38, 43) I went to all the available police, but the DA's office said it wouldn't prosecute. (R.A. 80 at 20) I filed private criminal complaints, but likely for the same reason the court denied it without explanation. (R.A. 81 at 22) From those complaints I learned that Kearney found out about criminal allegations against me through a State agent,(R.A. 101 at 146) and that Kearney exchanged at least 35 emails with state agents discussing me, or allegations against me. (R.A. 80 at 15; 107-110)

I filed a verified complaint in this action on October 26th, 2020, against ten named Defendants and ten John Does. In the complaint that was served on Defendants Google and Facebook on 11/18/2020 (ADD 8) I stated under penalties of perjury the history and aims of Kearney's conspiracies, yet Facebook and Google are still distributing all the offending content.

On October 29th 2020, Aidan Kearney attacked the credibility of potential witnesses Michelle Olson, Amanda Sawyer, and Michael Gaffney using YouTube [Google,] (R.A. 32-35) I filed a motion for an emergency injunction, but the court decided that my inability to effectively represent myself was not an emergency, and denied my first TRO/PI without reaching the merits. (R.A. 7 at 11) On or about November 12th 2020, Aidan Kearney said he was done playing nice, and in a threatening tone he said that if you sue him, he will burn your family to the ground. (R.A. 79) I refiled for an injunction as it was clear to me that without an injunction, any witness I named in a court filing would become cannon fodder. The court effectively suppressed my witnesses, critically impaired me, and blocked me from appealing the injunction motion by not making a decision on the preliminary injunction motion until he dismissed the case on May 11th, 2021. (Docket 89)

The original complaint contained several facts and claims that should have helped show plausibility in the amended complaints, but I excluded them from the amended complaints because of impairment and intimidation. In February the Defendants filed motions to dismiss, I made note in my oppositions that the impairment was preventing me from presenting my best argument. (R.A. 55) I filed a motion pursuant to Local Rule 83, to limit extrajudicial statements by parties. In the affidavit I showed how Aidan Kearney consistently uses social media to harass lawyers that take cases against him, (R.A. 71-73 at 7-13,16) and I explained that I

had a law firm ready to take the case if I got the harassment under control. I assumed the motion would be granted because it went unopposed, but the court blindsided me, sua sponte dismissing the complaint with prejudice, and without notice. (ADD 1) I rushed to file a motion to reconsider as I thought filing a response was the only way I could get any sleep. The court denied the motion deciding that even though I had no notice or prior opportunity to respond, deciding that I should not be allowed to "relitigate old matters, or to raise arguments." (ADD. 7-8)

Summary of the argument

On the surface the bar for me to win this appeal is extremely low (pg 6) because the Defendants intentionally hindered the presentation of my case, (pg 10) and the lower court's decision lacked due process. (pg 8) If this court thinks there is some hope that a law firm would be able to state a claim, the court must remand for further proceedings. (pg 11)

If there was not enough State action (pg 13-21) or conspiracy allegations (23-33) made, there could be. (pg 22) The principles of product design liability, gross negligence, and substantial assistance are all useful in determining causation under 1983,(pg 28) and all are now thoroughly alleged, and the Whistle Blowers testimony and reports help support all three. (ADD 23-26)

Section 230 is also easily overcome. First, the Defendants were legally made aware of the schemes outside of the role of a publisher. (Pg 38) Second, the statute does not mention the words distributor or immunity, and in the interest of constitutional avoidance the court shouldn't add them. (pg 49) Third, as currently interpreted, Section 230 is unconstitutional as it delegates too much power, is overly broad, and in effect is repulsive to the constitution. (pg 48) Forth, the Defendants' contributed to the illegality by given Kearney special privileges and by controlling algorithms that discriminate against victims of far-right extremists. (pg. 52) Fifth, favoring broad immunity has been a disaster for this country and the world. (pg 49) Sixth, Section 230 should not apply when the Defendant's recklessly allow and facilitate conspiracies under the color of the law. Seventh, Section 230 should not apply because Facebook has significant control over the Government. (pg 22)

Legal Standard

"By its very nature, a sua sponte dismissal engenders especially rigorous appellate review. " Santiago v. Puerto Rico, 655 F.3d 61, 72 (1st Cir. 2011) "a sua sponte dismissal may be upheld so long as "the allegations contained in the complaint, taken in the light most favorable to the plaintiff, are patently meritless and beyond all hope of redemption" Picciotto v. Zabin, 399 F. App'x 604, 606 (1st Cir. 2010) "We afford de novo review to a district court's order granting a motion to dismiss for failure to state a claim." Alston v. Spiegel, No. 20-1434, at *8 (1st Cir.

Feb. 19, 2021) However, dismissing with prejudice is reviewed for an abuse of discretion. Lomax v. Ortiz-Marquez, 140 S. Ct. 1721, 1726 (2020) "Courts should endeavor, within reasonable limits, to guard against the loss of pro se claims due to technical defects." Rodi v. Southern New England School of Law, 389 F.3d 5, 20 (1st Cir. 2004) The court stated that it "accepts as true all well-plead allegations" (ADD 2), however the Supreme Court confirmed after Twombly that "a pro se complaint, however inartfully pleaded, [still] must be held to less stringent standards than formal pleadings drafted by lawyers" Erickson v. Pardus, 551 U.S. 89, 94 (2007) see also Haines v. Kerner, 404 U.S. 519, 521 (1972) "[T]he liberal pleading standard of Haines applies only to a plaintiff's factual allegations. Responsive pleadings thus may be necessary for a pro se plaintiff to clarify his legal theories." Neitzke v. Williams, 490 U.S. 319, 331 n.9 (1989) The plausibility standard governs on a motion to dismiss. So, no single allegation need establish some necessary element [of the cause of action], provided that, in sum, the allegations of the complaint make the claim as a whole at least plausible." Garayalde-Rijos v. Municipality of Carolina, 747 F.3d 15, 24 (1st Cir. 2014) "[T]he complaint should be read in its entirety and "not parsed piece by piece to determine whether each allegation, in isolation, is plausible" Id. At 25 see also Justiniano v. Walker, 986 F.3d 11 (1st Cir. 2021)

Extraordinary Circumstances

This court should consider issues not presented in the lower court because of the Defendants' misconduct, the lack of due process with the Lower court's decision, and I was not aware of the Whistle Blowers potent evidence until after October 4th 2021. (ADD 23-27)

. "Absent the most extraordinary circumstances, legal theories not raised squarely in the lower court cannot be broached for the first time on appeal." Teamsters, Chauffeurs, Warehousemen & Helpers Union, Local No. 59 v. Superline Transportation Co., 953 F.2d 17, 21 (1st Cir. 1992) see below.

The Lower court's decision lacked due process.

The Lower Court did not give me notice of its intent to sua sponte dismiss the complaint or notice of the perceived deficiencies in my complaint. (ADD 1) (Like the court usually does[1]) Additionally the court did not allow me to "raise arguments" in my rule 59e motion. (ADD 11 at 93) The Sixth circuit recently held that Plaintiff's in this situation "[have] no obligation to file a motion to reconsider before seeking an appeal, because they were entitled to raise the issue on appeal instead." Stanislaw

[1] Eg *Gillespie v. Cypher*, Civil Action 20-30050-MGM, at *1 (D. Mass. July 23, 2021); *Ramos v. City of Springfield*, Civil Action No. 17-30050-MGM, at *1 (D. Mass. Jan. 6, 2021); Emrit v. Fed. Bureau of Investigation, No. CV 20-30018-MGM, 2020 WL 4003264, at *1 (D. Mass. July 15, 2020) see also Bank Nat'l Tr. Co. v. Pike, 916 F.3d 60, 67 (1st Cir. 2019)

v. Thetford Township , 20-1660, at *1 (6th Cir. July 19, 2021) See also Purvis v. Ponte, 929 F.2d 822, 826-27 (1st Cir. 1991) (holding that because the court accepted a motion for reconsideration with a supporting memorandum and affidavit the plaintiff received practical protections) "[N]otice and an opportunity to be heard are essential principles of due process" Gagliardi v. Sullivan, 513 F.3d 301, 308 (1st Cir. 2008) "Plaintiff must be afforded an opportunity to supplement his allegations before any dismissal on the merits is imposed." Street v. Fair, 918 F.2d 269, 273 (1st Cir. 1990) "Orderly rules of procedure do not require sacrifice of the rules of fundamental justice." Hormel v. Helvering, 312 U.S. 552, 557, 61 S. Ct. 719, 721, 85 L. Ed. 1037 (1941) "Justice must satisfy the appearance of justice." Liljeberg v. Health Services Acquisition Corp., 486 U.S. 847, 864 (1988) "Yet in dismissing the claim on this basis sua sponte, with prejudice, and without affording plaintiff notice and an opportunity to be heard, the court acted at best prematurely." Street v. Fair, 918 F.2d 269, 272 (1st Cir. 1990) see also Gonzalez-Gonzalez v. U.S., 257 F.3d 31, 36-37 (1st Cir. 2001); Biron v. Upton, No. 15-10684, at *6 (5th Cir. June 18, 2018); Westley v. Alberto, No. 16-10666, at *9 (11th Cir. July 12, 2017); Ruiz v. La. State, No. 19-30416, at *4 (5th Cir. June 28, 2021); Curley v. Perry, 246 F.3d 1278, 1284 (10th Cir. 2001)

Misconduct

Aidan Kearney intentionally distributed content to punish and discredit my first witnesses (R.A. 32-33), which prevented me from presenting all my evidence, arguing my best case (R.A. 44-47, 55, 70, 84), or receiving representation. (R.A. 55, 75 at 21, and 92 at 86) Aidan Kearney and the Tech Defendants were aware that Kearney's articles were the cause of my adjustment disorder, and that adjustment disorder causes "significant impairments in social, occupational or other domains of functioning." (R.A. 46) The Defendants also knew that "the symptoms typically resolve within 6 months, unless the stressor persists for a longer duration." Id "There are two prerequisites to obtaining redress under [rule 60b] First, the movant must demonstrate misconduct… by clear and convincing evidence… Second, the movant must show that the misconduct foreclosed full and fair preparation or presentation of his case." Karak v. Bursaw Oil Corp., 288 F.3d 15, 20-21 ("1st Cir. 2002) The "alleged misconduct substantially interfered with [my] ability to prepare the case" Fontanillas-Lopez v. Morell Bauzá Cartagena & Dapena, LLC, 832 F.3d 50, 63 (1st Cir. 2016) (SAC 43, 84-86) "Misconduct does not demand proof of nefarious intent or purpose as a prerequisite to redress, and the term can cover even accidental omissions. All in all, relief on the ground of misconduct may be justified whether there was evil, innocent or careless purpose." West v. Bell Helicopter Textron, Inc., 803 F.3d 56, 67 (1st Cir. 2015) "recklessness exists "when a person disregards a risk

of harm of which he is aware" Elonis v. United States, 575 U.S. 723, 745 (2015) ("There can be no real dispute that recklessness regarding a risk of serious harm is wrongful conduct.")

The Lower court helped hinder the presentation of my case

The lower court prevented me from having a lawyer and presenting my best evidence and arguments by not ruling on either of my injunction motions until he dismissed the complaint, and he did so without reaching merits. (ADD. 1) A court abuses its discretion when it fails to give it.

Dismissal with Prejudice was a abuse of discretion

The lower court should have explained why it treated this case differently than recent cases. "As a general principle, the unfavorable disposition of a plaintiff's federal claims at the early stages of a suit . . . will trigger the dismissal without prejudice of any supplemental state-law claims." Powell v. City of Pittsfield, Civil Action No. 18-30146-MGM, at *14 (D. Mass. Dec. 14, 2020); see also Hall v. Hell's Angels U.S.A., Inc., Civil Action No. 19-30134-MGM, at *2 (D. Mass. Mar. 22, 2021) "Indeed, this 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) "Because a 28 U.S.C. § 1915(e) dismissal is "an exercise of the court's discretion under the in forma pauperis statute, the dismissal does not prejudice the filing of a paid complaint making the same allegations." O'Rorke v. Porcaro (In re Porcaro), 547 B.R. 484, 487 (B.A.P. 1st Cir. 2016) "'The PLRA's screening requirement does not explicitly or implicitly justify deviating from the usual procedural practice beyond the departures specified by the PLRA itself .'" Wexford Health v. Garrett, 140 S. Ct. 1611, 1612 (2020) quoting Jones v. Bock, 549 U.S. 199, 214 (2007)

If the court perceived state action or conspiracy insufficient, it could have permitted limited discovery or at least given me notice of the issues. "[I]t will often be difficult for a plaintiff to plead with specificity when the facts that would support her claim are solely in the possession of a defendant, we held in New England Data Services, Inc. v. Becher,829 F.2d 286 (1st Cir. 1987), that a court faced with an insufficiently specific claim may permit limited discovery in order to give a plaintiff an opportunity to develop the claim and amend the complaint. Cordero-Hernandez v. Hernandez-Ballesteros, 449 F.3d 240, 244 (1st Cir. 2006) see also Slotnick v. Garfinkle, 632 F.2d 163, 165 (1st Cir. 1980) ("the court held a hearing… for the purpose of allowing Slotnick to supplement orally the allegations of his pro se complaint.")

If insufficient the complaint can be remedied.

As stated above, misconduct foreclosed the full and fair presentation of my case, but with my mental health improving and the new whistle blower evidence several claims could be amended. (ADD 27-29)

Equitable leniency

The purpose of requiring "a short and plain statement of the claim showing that the pleader is entitled to relief, is to give the defendant *fair* notice of what the . . . claim is and the grounds upon which it rests." Bell Atl. Corp. v Twombly, 550 U.S. 544, 555 (2007) In this case the main three Defendants have not been fair to me, and they are still distributing or providing substantial assistance for the distribution of content that they know is hindering the presentation of my case. (RA 33 at 5; 84 at 37, 38, 43)) I stated that looking at the facts stressed my adjustment disorder, (R.A 91 at 84; 103 at 161& 163) making it much easier for me to convey legal theories than facts. Because the Defendants actions are the cause of my impairment it would only be fair to give me an opportunity to explain and supplement where the court deems my complaint insufficient. “In these types of cases, the complaint merely needs to give the defendant sufficient notice to enable him to begin to investigate and prepare a defense.” Luevano v. Wal-Mart Stores, Inc., 722 F.3d 1014, 1028 (7th Cir. 2013) “In emphasizing the need for flexibility, for avoiding mechanical rules, we have followed a tradition in which courts of equity

have sought to relieve hardships which, from time to time, arise from a hard and fast adherence to more absolute legal rules, which, if strictly applied, threaten the evils of archaic rigidity, The flexibility inherent in equitable procedure enables courts to meet new situations that demand equitable intervention, and to accord all the relief necessary to correct ... particular injustices." Holland v. Florida, 560 U.S. 631, 650 (2010)

State Action

"The state action inquiry is preliminary to, and independent of, the due process inquiry." Jarvis v. Vill. Gun Shop, Inc., 805 F.3d 1, 8 (1st Cir. 2015) As described in detail below, the State action requirement for 1983 is met through several factors and will not require a lot of discovery. "For the reasons set forth… 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) Indirect evidence can prove state action e.g., Wagenmann v. Adams, 829 F.2d 196, 210 (1st Cir. 1987) "the [Supreme Court], mindful of the fact-sensitive nature of the inquiry, have 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). "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) Regardless, it is improper to deny state action at this stage, "This inquiry is typically factbound." Jarvis v. Vill. Gun Shop, Inc., 805 F.3d 1, 8 (1st Cir. 2015) but it can properly be the subject of summary judgment." Rodriguez-Garcia v. Davila, 904 F.2d 90, 94 (1st Cir. 1990) see also Brentwood Acad. v. Tenn. Secondary Sch. Athletic Ass'n, 531 U.S. 288 (2001)

Supplant state action

"This action is to stop an *effective* conspiracy by which *hundreds* of citizens including myself have been deprived of due process and equal protection of the laws because of our willingness to stand for social justice. Aidan Kearney brags that he has loyal followers in *every* police department in Massachusetts that send him stories." (R.A. 77 at 1) "There appear to be three possible forms for a state action limitation on § 1985(3) — that there must be action under color of state law, that there must be interference with or influence upon state authorities, or that there must be a private conspiracy *so massive and effective* that it supplants those authorities

and thus *satisfies the state action* requirement." Griffin v. Breckenridge, 403 U.S. 88, 98 (1971) see also Collins v. Hardyman, 341 U.S. 651, 662 (1951) The third form of State action has not yet had its pleading standards defined, although I argue that my complaint is satisfactory for this form of state action, as it alleges an "effective" conspiracy involving "hundreds" of citizens and police in *every* police department in Massachusetts. (R.A. 77 at 1)

"When private individuals conspire for the purpose of arresting or impeding the State's power to protect or secure equal protection of the laws to a group of citizens, those conspirators are supplanting the State's conduct with their own. It seems clear to us that such a conspiracy is precisely the type that the Carpenters Court was referring to when it discussed a conspiracy "to influence the activity of the State" and thereby prevent it from securing equal protection of the laws to its citizens. Carpenters,463 U.S. at 830, 103 S.Ct. at 3357. When the State's conduct is thus arrogated, state action is clearly implicated, and rights protected only against official infringement are likewise implicated." Libertad v. Welch, 53 F.3d 428, 450 (1st Cir. 1995)

Inaction

The State Action requirement is also met through state inaction. "… the Defendants should be considered as acting under the color of the law as… the State has intentionally tolerated the illegal conduct." (R.A 81 at 25) see also (R.A. 80-81

at 20 & 22) "[T]he police have refused to protect me according to the standing laws. My witnesses were silenced, the courts were impotent, the laws were annulled, the real criminals went free, while I exhausted all available remedies for redress in vain" (R.A. 77 at 1) "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) One of the reasons Congress passed the Klu Klux Klan act was "to provide a federal remedy where the state remedy, though adequate in theory, was not available in practice." Zinermon v. Burch, 494 U.S. 113, 124 (1990) This was stated more clearly by the congressman of 1871, Mr. Coburn said "a systematic failure to make arrests, to put on trial, to convict, or to punish offenders against the rights of a great class of citizens is a denial of equal protection in the eye of reason and the law" Cong. Globe, 42d Cong., 1st Sess., 459 (1871) Mr Wilson from Indiana said, "failure to enact the proper laws [to provide for equal protection], *or a failure to enforce them*, is a denial of equal protection." Id. 483 see also Mr. Frelinghuysen. Id. 501 and, Mr. Pratt Id. 506

Similarly the allowance of death threats by Judge Jane Mulqueen[2] and John Payne, (R.A. 81 at 22) should hold some weight for state action too, as the amount of threats dramatically increased after the state gave approval of the public shaming.[3] "[T]he action of state courts and judicial officers in their official capacities is to be regarded as action of the State within the meaning of the Fourteenth Amendment" Shelley v. Kraemer, 334 U.S. 1, 14 (1948) "Immunity does not change the character of the judge's action or that of his co-conspirators." Dennis v. Sparks, 449 U.S. 24, 28 (1980) Impotent state courts was a primary concern of the 42nd congress. "The arresting *power is fettered, the witnesses are silenced, the courts are impotent, the laws are annulled, the criminal goes free, the persecuted citizen looks in vain for redress*... What, then, can be done? The States cannot or do not act. Some other power must be invoked." Supra Globe 459 Coburn [see (SAC 1)] 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." Zinermon v. Burch, 494 U.S. 113, 124-25 (1990)

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[2] The same Jane Mulqueen the Lower court promoted in 2011 to head the SVU for the Hampden county DA's office.

[3] Notably the State case 1879CV0344 was remanded for further proceedings.

Compulsion

"[A] private party is fairly characterized as a state actor when the state…has provided such significant encouragement, either overt or covert, that the challenged conduct must in law be deemed to be that of the State." Estades-Negroni v. CPC Hospital San Juan Capestrano, 412 F.3d 1, 5 (1st Cir. 2005) quoting *Blum v. Yaretsky*, 457 U.S. 991, 1004 (1982) "Aidan Kearney wrote in his book that being supported and followed by several police departments including Boston has been a big help to him growing his audience and reach." (R.A. 80 at 17) "Aidan Kearney has bragged while being interviewed that he has police and state agents in every department across Massachusetts that feed him information. Aidan Kearney has also bragged on social media and in his book 'I am Turtleboy,' that police send him information that they do not send to the traditional media." (R.A. 80 at 16) The rationing of State property and interdependence adds weight to State action, E.g. Fortin v. Darlington Little League, Inc., 514 F.2d 344, 347 (1st Cir. 1975)

Symbiotic relationship

"…Aidan Kearney has committed a variety of criminal acts to obstruct the civil and criminal cases against him, but because of Aidan Kearney's symbiotic relationship with law enforcement the police have refused to protect me according to the standing laws..." (R.A. 77 at 1) "Aidan Kearney routinely harasses victims of

police corruption on his 'weaponized' social media account's and portrays the victims as culprits." (R.A. 80 at 18) "Aidan Kearney has bragged about getting police officers to bring criminal charges against multiple citizens. Including but not limited to Lorrayna Calle and Katherine Peter." (R.A. 80 at 19) "Police officers have routinely refused to hold Aidan Kearney accountable for crimes…" (R.A. 80 at 20) By shaming victims of police brutality/corruption, and intimidating exculpatory witnesses in hundreds of criminal cases, Kearney conferred a significant benefit upon the police and district attorney's office that justified the return good ole boy immunity for Kearney, and liberality as to providing him with official information. see Fortin v. Darlington Little League, Inc., 514 F.2d 344, 347-48 (1st Cir. 1975) "While the fact of a financial partnership is instructive in the determination of a symbiotic relationship, the lack of that financial characteristic is not necessarily dispositive. The test is one of interdependence and joint participation, rather than one of financial enrichment." Rodriguez-Garcia v. Davila, 904 F.2d 90, 98 (1st Cir. 1990) Aidan Kearney's extra friendly relationship with the police and District Attorney add weight for state action. Eg. Wagenmann v. Adams, 829 F.2d 196, 209-10 (1st Cir. 1987)

Joint action

"[A]n otherwise private person acts "under color of" state law when engaged in a conspiracy with state officials to deprive another of federal rights," Tower v.

Glover, 467 U.S. 914 (1984) "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. Moreover, a private party involved in such a conspiracy, even though not an official of the State, can be liable under § 1983." Adickes v. Kress Co., 398 U.S. 144, 152 (1970) "In the present case, the participation by law enforcement officers, as alleged in the indictment, is clearly state action, as we have discussed, and it is therefore within the scope of the Fourteenth Amendment." United States v. Price, 383 U.S. 787, 799-800 (1966) "Current and former police officers have harassed and intimidated me on Turtleboy's Facebook and YouTube social media accounts…" (R.A. 81 at 23) "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." (R.A. 101 at 145) see also (R.A. 80 at 15) "unlike statements by media commentators or even a single trial witness, statements by counsel for the parties bears an imprimatur of official and informed opinion that statements by others do not." United States v. Bulger, Crim. Action No. 99-10371-DJC, at *10 (D. Mass. July 1, 2013) Comments by police and state agents have greater impact. Dr. MSB is the vet that was contracted by the state to do a necropsy on my dog. Aidan Kearney alleges that she was the first

person to contact him about my story. (SAC 146) Contracted state agents hold just as much weight for state action as full-time state employees. E.g West v. Atkins, 487 U.S. 42, 56 (1988)

Additional claims to hold Facebook's actions under the color of law

I allege that because Facebook has significant control over the Government that they should be held accountable as State actors. 1. Multiple congressmen noted on October 5th, 2021, that Big Tech lobbyists are the biggest obstacle to section 230 reform. 2. Facebook knowingly facilitated the interference of our politics and discourse by recklessly allowing thousands of foreign agents in Iran, Russia, China, and beyond to exploit their chattels. 3. FB has 100% control of their algorithms, and they are aware that the current settings for their algorithms are forcing politicians to take positions, that they know their own constituents don't like or approve of because those are the ones that Facebook's algorithms distribute. 4. FB has significant influence over what politicians get elected by allowing some politicians to break their rules with impunity, while forcing others to comply. FB knows that content that violates their rules spreads the fastest. (ADD 27-28) "Victims of a constitutional violation perpetrated by a federal actor may sue the offender for damages in federal court despite the absence of explicit statutory authorization for such suits." Soto-Torres v. Fraticelli, 654 F.3d 153 (1st Cir. 2011)

Conspiracy plausibility by continued distribution and agreement

Facebook stopped enforcing their rules against Aidan Kearney by putting him on a special list after he met with Facebook employees. (ADD 28 at 5) On June 23rd, 2019, "Aidan Kearney sent pictures and recordings [he took during one of our] court hearings to a woman in Illinois named Michelle Olson, and asked her to post them… so that he could use them without the pictures being traced back to him." (R.A. 33 at 8; 40-43) "Aidan Kearney, and several currently unknown parties conspired using secret groups on Facebook, and or Discord. (R.A 89 at 74; R.A. 125) Exhibit G of the SAC is a screen shot of Aidan Kearney using a secret group on Facebook, "The Big 8" to say he didn't care if his blog led to the death of me or my witnesses because our participation in court hearings caused him "psychological effects." (ADD 29 at 12) It is reasonable to infer that the exhibits are evidence for the claims they are attached to. The affidavit with my motion under local rule 83.2.2 detailed numerous undisputed allegations that Kearney has routinely harassed my witnesses (R.A. 70-71 at 2-5) and has routinely directed his cult following to harass lawyers that take case against him. (R.A. 71-75 at 6-13, 16, 23) My first injunction motion showed an undisputed example of Aidan Kearney conspiring to use his platform to obstruct a court case using Facebook. (R.A 33 at 8; 40-43) "undenied factual allegations must be accepted as true" United States v. Baus, 834 F.2d 1114, 1122 (1st Cir. 1987) "The defendants, by their silence, have acquiesced in these findings." Corporate Techs.,

Inc. v. Harnett, 731 F.3d 6, 9 (1st Cir. 2013) Exhibit A of the SAC shows examples of Aidan Kearney discussing criminal allegations about me with State agents. Exhibit B shows examples of state agents harassing me on Aidan Kearney's Google and Facebook pages. Exhibits E and F and paragraph 123 of the SAC show that Aidan Kearney encouraged threats by liking them. "On the most basic level, clicking on the 'like' button literally causes to be published the statement that the User 'likes' something, which is itself a substantive statement." Bland v. Roberts, 730 F.3d 368, 386 (4th Cir. 2013) "Exhibits attached to the complaint are properly considered part of the pleading and, in addition, when a complaint's factual allegations are expressly linked to—and admittedly dependent upon—a document (the authenticity of which is not challenged), that document effectively merges into the pleadings and the trial court can review it in deciding a motion to dismiss under Rule 12(b)(6)." Maddison v. City of Northampton, Civil Action No. 20-30089-MGM, at *5 (D. Mass. Apr. 9, 2021) citing Trans-Spec Truck Serv., Inc. v. Caterpillar Inc., 524 F.3d 315, 321 (1st Cir. 2008) "circumstantial evidence will suffice to establish the elements of a conspiracy" U.S. v. MartíNez-Mercado, 919 F.3d 91, 100 (1st Cir. 2019) "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) "It is well-established that evidence of prior bad acts… may be admitted to prove, among other things, knowledge, intent, or absence of mistake or

accident." U.S. v. Frankhauser, 80 F.3d 641, 648 (1st Cir. 1996) "The agreement that rests at the heart of a conspiracy is seldom susceptible of direct proof: more often than not such an agreement must be inferred from all the circumstances." Sánchez v. Foley, No. 18-1994, at *22 (1st Cir. Aug. 18, 2020) "Those inferences, however, must be reasonable and must be supported by a plausible rendition of the facts of record." Alston v. Int'l Ass'n of Firefighters, Local 950, No. 20-1434, at *42 (1st Cir. May 19, 2021) Katherine Peter was Kearney's primary co-conspirator before they separated, she has detailed past conspiracies with screenshots that she had with Kearney to obstruct my state court case, and she could detail intricate details of the conspiracy if she is protected. "[H]earsay statements of co-conspirators may constitute a part of the evidentiary fabric from which a threshold conspiracy finding is made — individual pieces of evidence, insufficient in themselves to prove a point, may in cumulation prove it." Earle v. Benoit, 850 F.2d 836, 843 (1st Cir. 1988) Google and Facebook were legally made aware that Aidan Kearney had impaired my ability to argue (R.A 18-19 at 88, 92) and that Kearney harassed me and my witnesses using their platforms (R.A. 9-13 at 34-54) "Aidan Kearney and Katherine Peter were the primary publishers of most of the offending content, but Facebook and Google continued to distribute or were secondary publishers of the offending content after being legally notified of the history, goals, and aims of the illegal scheme." (R.A. 103 at 162) see also (R.A. 92-93 at 89-92; R.A. 32-33)

"Google's conspiratorial agreement can be inferred because of their retaliatory policy of refusing to stop distributing content that threatens or encourages viewers to threaten and attack opposing litigants and their families." (R.A. 91 at 81-82) "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) One who is aware they are distributing obstructive material should be required to use at least as much care as they would with defamatory material. "One who intentionally and unreasonably fails to remove defamatory matter that he knows to be exhibited on land or chattels in his possession or under his control is subject to liability for its continued publication." Restat 2d of Torts, § 577 (2nd 1979) "A defendant who does not know the entire conspiratorial sweep is nevertheless jointly and severally liable, in the civil context, for all acts in furtherance of the conspiracy." Aetna Cas. Sur. Co. v. P B Autobody, 43 F.3d 1546, 1562 (1st Cir. 1994)

Recently, the Lower court held that a claim alleging that a Defendant "falsely disparaged Plaintiff to the media on multiple occasions" not only helped show "an effort to threaten, intimidate, and coerce Plaintiff," (ADD 21-22) but Mark Mastroianni ruled "if such allegations are adequately substantiated by evidence, a reasonable factfinder might conclude that defendant's conduct was so offensive and egregious as to shock the conscience." Borowski v. Kasper et al 3:20-cv-30165-

MGM (Docket 19 July 30, 2021) But in that case the media was not weaponized like Aidan Kearney's, and in that case the Defendants didn't frequently admit or brag about their ability to intimidate witnesses. (R.A 89-90 at 75,78,79) Aidan Kearney has trained his followers to use virtual private networks and fake names on Facebook and Google to hide their identity when harassing his targets. (R.A. 89 at 77) "An illustration provided in the Restatement section 876(b) suggests that a defendant who specifically advises another party to commit conduct constituting a particular tort may be subject to liability under a substantial assistance theory even if he is unaware of whether the tort was accomplished." Taylor v. American Chemistry Council, 576 F.3d 16, 36 (1st Cir. 2009)

Coercive conspiracy

Alternatively, all of "the parties decided to act interdependently, each actor decid[ed] to act only because he was aware that the others would act similarly." Sánchez v. Foley, No. 18-1994, at *21 (1st Cir. Aug. 18, 2020) "There is precedent supporting a very limited cause of action in Massachusetts for civil conspiracy" of a coercive type. In order to state a claim of this type of civil conspiracy, plaintiff must allege that defendants, acting in unison, had some peculiar power of coercion over plaintiff that they would not have had if they had been acting independently." Aetna Cas. Sur. Co. v. P B Autobody, 43 F.3d 1546, 1563 (1st Cir. 1994) (quotations

omitted) As already stated, Aidan Kearney proudly weaponized social media, and examples are in the record.

In Mr. Stevenson's speech on the House floor, he described an editor of a newspaper named Daniel Dennet. Daniel used the same vile style of writing as Kearney to direct people to attack republicans, including a judge and two sheriffs. "To such sheets, more than to any other single cause, the condition of the South is due; and upon the heads of such editors is the blood of thousands of innocent men." 42 Globe Appendix at 296 (1871)

Product design/ gross negligence

A conspiracy is one of "the mechanism[s] by which to obtain the necessary state action, or to impose liability on one defendant for the acts of the others" Sánchez v. Foley, No. 18-1994, at *19-20 (1st Cir. Aug. 18, 2020) (internal citations omitted). But now that I am less impaired, I believe my first two claims are best read as providing causation for § 1983. Courts "employ common law tort principles when conducting inquiries into causation under § 1983. The language of Section 1983 demands as much. The statute imposes liability upon those who 'subject or cause to be subjected' any citizen to a deprivation of a constitutional right. 42 U.S.C. § 1983. We have explained that the causal connection alluded to by the statute can be established not only by some kind of personal participation in the deprivation, but

also by setting in motion a series of acts by others which the actor knows or reasonably should know would cause others to inflict the constitutional injury. Put another way, an actor is responsible for those consequences attributable to reasonably foreseeable intervening forces, including the acts of third parties." Sanchez v. Pereira-Castillo, 590 F.3d 31, 50-51 (1st Cir. 2009) "Section 1983, should be read against the background of tort liability that makes a man responsible for the natural consequences of his actions." Wagenmann v. Adams, 829 F.2d 196, 212 (1st Cir. 1987) "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)

Recently the Ninth Circuit held a Social Media company "negligently designed the application with a defect that encouraged dangerous driving, which did not depend on company's publishing of third-party content." Lemmon v. Snap, Inc., C.A.9 (Cal.) 2021, 995 F.3d 1085 ("A manufacturer of a chattel made under a plan or design which makes it dangerous for the uses for which it is manufactured is subject to liability to others whom he should expect to use the chattel or to be endangered by its probable use for physical harm caused by his failure to exercise reasonable care in the adoption of a safe plan or design.") Id at 1092 quoting

Restatement (Second) of Torts § 398 (1965) Notably, "[u]nder Massachusetts law, a professional does not owe a duty of care to a noncontractual third party unless it was foreseeable and reasonable for the third party to rely on the services provided by the professional, and the professional had actual knowledge that the third party was relying on the professional's services." Steinmetz v. Coyle & Caron, Inc., 862 F.3d 128, 140 (1st Cir. 2017)

"Facebook allowed users to provide context to violations of their rules in January 2019, but they have since removed that feature. Facebook is deliberately indifferent to the rights of US citizens as they do not currently provide any method to explain why or how something is unlawful, discriminatory, or violating a person's rights. Google is deliberately indifferent to the rights of US citizens as they do not currently have an effective method of reporting or preventing witness intimidation [or violations of civil rights by state actors] on their platforms…." (R.A. 85-86 at 50-52)

"Google and Facebook knew or should have known that their platforms were being routinely used to harass US citizens. Google and Facebook have failed to adequately train their employees to respect the rights of US citizens and litigants in court cases. Facebook and Google's negligence are the proximate cause of my injuries, harm and economic loss, which I have suffered and/or will continue to suffer. Had the Defendants took reasonable care I would not have suffered those

injuries and damages as described herein with particularity." (R.A 88 at 65-68) "Facebook and Google had a duty under Massachusetts common law to proceed in good faith, and to act with reasonable diligence to bring their litigation to a final conclusion, and to conduct themselves with at least that modicum of civility, courtesy and respect, for all of the parties in this case. Facebook and Google also had a fundamental duty under the maxim sic utere tuo ut alienum non laedas, to not allow their property to routinely trample on the rights and livelihoods of US citizens." (R.A. 88-89 at 70, 71)

Substantial assistance

Alternatively, the same facts just described for secondary publisher liability could be applied to the substantial assistance theory. "Under the substantial assistance theory, a defendant is liable for the conduct of another if he 'knows that the other's conduct constitutes a breach of duty (R.A 75 at 24-26; 82 at 31; 86 at 53-55; 88 at 65; 91-93 at **81**, 82, and 89-93) and gives substantial assistance or encouragement to the other so to conduct himself. To recover under this theory, the plaintiff must establish two elements. First, the defendant must give "substantial assistance or encouragement" [(R.A. 91 at 81] to a party engaging in tortious conduct. Only assistance or encouragement that is a 'substantial factor in causing the resulting tort' exposes the actor to liability. [(R.A. 85 at 50-51; 86 at 55; 84 at 38; R.A. 87-88 at 63, 66-68; R.A 99 at 128)] To determine whether this threshold is

met, courts should consider the nature of the act encouraged, the amount of assistance given by the defendant, his presence or absence at the time of the tort, his relation to the other and his state of mind. Second, the defendant must possess an unlawful intent. Unlawful intent comprises two distinct mental states: knowledge that the other's conduct is tortious, and an intent to substantially assist or encourage that conduct. *Unlawful intent does not require an agreement* between the defendant and the tortfeasor.**"** Taylor v. American Chemistry Council, 576 F.3d 16, 35 (1st Cir. 2009) (citations omitted) Aidan Kearney said he is dependent on Facebook in his book "I am Turtleboy" (R.A. 126 at 2) Facebook's algorithms encourage violent content by making it significantly more profitable, Facebook encourages illegality, by claiming to take action against people that abuse their platforms, but secretly tweaking their system to encourage violations that they know are necessary for safety, while granting certain users immunity from their rules. (ADD. 23-29)

Failure-to-train/ gross negligence

When companies intentionally turn a blind eye to oppression being done with their products by state actors they should be held to at least the standards of municipalities. "YouTube and Facebook have intentionally made it difficult and or impossible to inform them that the state was exploiting their platforms without starting a legal action, and after receiving legal notice they have continued to support and protect the scheme. Their acceptance can be inferred as a wink is as good as a

nod to a blind horse." (R.A. 81 at 24) "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." Hunt v. Weatherbee, 626 F. Supp. 1097, 1107 (D. Mass. 1986) "Facebook and Google failed to train and or supervise employees and or adopt policies that respect the rights of US citizens, particularly litigants" (R.A. 102 at 152) "Even in the absence of a showing that officials knew of a substantial risk of serious harm at the hands of a particular subordinate, a plaintiff still may, in rare circumstances, make a plausible showing of deliberate indifference by alleging facts that indicate "a known history of widespread abuse sufficient to alert a supervisor to ongoing violations," from which officials could infer a substantial risk of serious harm." Parker v. Landry, 935 F.3d 9, 17 (1st Cir. 2019) see also Board of Comm'rs of Bryan County v. Brown, 520 U.S. 397, 409-10 (1997)

"Section 1983 Due Process

"To state a claim under § 1983, a plaintiff must allege the violation of a right secured by the Constitution and laws of the United States, and must show that the alleged deprivation was committed by a person acting under color of state law." West v. Atkins, 487 U.S. 42, 48 (1988) I am not certain I used the correct legal term for the cruel and unusual punishment claim, "the relevant constitutional provision is not the Eighth Amendment but is, instead, the Due Process Clause of the Fourteenth Amendment. 'Eighth Amendment scrutiny is appropriate only after the State has

complied with the constitutional guarantees traditionally associated with criminal prosecutions. The State does not acquire the power to punish with which the Eighth Amendment is concerned until after it has secured a formal adjudication of guilt in accordance with due process of law. Because there had been no formal adjudication of guilt against Kivlin at the time he required medical care, the Eighth Amendment has no application." Revere v. Massachusetts General Hospital, 463 U.S. 239, 244 (1983) (quotations omitted) However, "[t]he Eighth Amendment's text is not expressly limited to criminal cases," Austin v. United States, 509 U.S. 602 (1993) Regardless, even if I did label the claim wrong, the "Fourteenth Amendment due process right… is at least as great as the corresponding right… under the Eighth Amendment." Gerakaris v. Champagne, 913 F. Supp. 646, 652 (D. Mass. 1996)

If the cumulation of State Action described above is satisfactory, then my due process claim is solid as Aidan Kearney's social media profiles are clearly punitive. In 2003 the Supreme court decided that the sex offender registry laws were non punitive because unlike Kearney's social media, the goal was not to shame, the information had to be sought, and "[t]he State's Web site does not provide the public with means to shame the offender by, say, posting comments underneath his record." Smith v. Doe, 538 U.S. 84, 99 (2003). "[T]he 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) "Certainly where the State attaches a badge of infamy to the citizen, due

process comes into play. 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." Wisconsin v. Constantineau, 400 U.S. 433, 437 (1971) (quotations omitted.) "If the Fourteenth Amendment forbids denial of counsel, it clearly denounces denial of any trial at all." United States v. Price, 383 U.S. 787, 799 (1966) "[T]his punishment cannot be imposed without a prior criminal trial and all its incidents, including indictment, notice, confrontation, jury trial, assistance of counsel, and compulsory process for obtaining witnesses. If the sanction these sections impose is punishment, and it plainly is, the procedural safeguards required as incidents of a criminal prosecution are lacking. We need go no further." Kennedy v. Mendoza-Martinez, 372 U.S. 144, 167 (1963) "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)

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. In sum, then, although mental and emotional distress caused by the denial of procedural due process itself is compensable under § 1983, we hold that neither the likelihood of such injury nor the difficulty of proving it is so great as to justify awarding compensatory damages without proof that such injury actually was caused." Carey v. Piphus, 435 U.S. 247, 263-64 (1978) In this case I have proof, I was diagnosed with adjustment disorder. (R.A. 84 at 38) "[T]he decision, if made by a professional, is presumptively valid" Youngberg v. Romeo, 457 U.S. 307, 323 (1982) Plus, "the reputational harm is unusually serious as evidenced by the fact that employment (or some other right or status) is affected." Romero-Barcelo v. Hernandez-Agosto, 75 F.3d 23, 32 (1st Cir. 1996) see (SAC 39,40,44,157) "The fundamental requirement of due process is the opportunity to be heard "at a meaningful time and in a meaningful manner." Mathews v. Eldridge, 424 U.S. 319, 333 (1976) "This Court has recognized a distinction between punitive measures that may not constitutionally be imposed prior to a determination of guilt and regulatory restraints that may." Bell v. Wolfish, 441 U.S. 520, 537 (1979) "Retribution and deterrence are not legitimate nonpunitive governmental objectives." Id. 539

42 U.S.C. § 1986

"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 provision of 1985 in which I rely was included by the senate to afford "protection to parties who had been hindered and oppressed and who were undertaking to resort to the judiciary for their protection" Sen Edmunds Cong. Globe, 42d Cong., 1st Sess., 567 (1871) It would make since for this court to be extra careful not to dismiss a complaint that alleges oppressive conduct is hindering the presentation of a CRA Plaintiff's claims.

Sen. Pratt seemingly argued for 1986 saying "[l]et 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." 506 42nd globe. Senator Pratt has a point, any relief the court could grant against Aidan Kearney individually would not do anything for my protection, or to slow the effectiveness of the conspiracy. But we certainly will see an end to this miserable

business if the court makes Facebook and Google answer from their pockets for allowing organized mobs to intimidate witnesses and violate the protected rights of citizens without any effective user support.

Section 230 does not apply to 42 U.S.C. 1986

"Section 230(c)(1)… shields conduct if the defendant (1) is a provider or user of an interactive computer service; (2) the claim is based on information provided by another information content provider; and (3) the claim would treat the defendant as the publisher or speaker of that information." Jane Doe No. 1 v. Backpage.Com, LLC, 817 F.3d 12, 19 (1st Cir. 2016) Section 1986 only requires someone have knowledge of wrongs to be committed, (ADD. 15) in this case the Defendants were notified through there attorney's and the legal notice filed with Google. "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) see Continued Distribution/ Agreement above. Ultimately, 1986 does not require treating the Defendants as Publishers or Speakers.

42 U.S.C. § 1985 (2) Obstruction in a Federal Case

"If two or more persons in any State or Territory conspire 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…" 42 U.S.C. 1985 "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)

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." (R.A. 90 at 79) Paragraphs 75, 76, and 78 of the SAC (R.A. 89) 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…" (R.A. 84 at 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." R.A. 91 at 84-86

42 U.S.C. § 1985 (3)

Went in disguise on the premises of another

"If two or more persons, conspire ***or*** *go in disguise… on the premises of another*, [R.A. 89 at 77; 99 at 133] for the purpose of depriving, either directly *or indirectly*, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws… in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, 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. § 1985 (3) Aidan Kearney and Katherine Peter conspired against me and went in disguise on Facebook using fake profiles to punish me for exercising my first amendment right, and to deter or interfere with future expressions." to "interfere with my right to be fairly heard in court with conformity to the laws." and "because of my willingness to stand for social justice." (R.A. 99 at 133-135) The amendment to add, "or go in disguise upon the public highway or on the premises of another" was agreed upon without debate. Supra Globe at 521 Public highway could arguably be the

internet, but Aidan Kearney uses a vast number of fake profiles to conduct his harassment campaigns, which easily meets the requirement "on the premises of another."

Political Discrimination

"The legislative history of § 1985(3) confirms that even though it was primarily motivated by the mob violence directed at the newly emancipated slaves in the Reconstruction era, "its protection extended to `all the thirty-eight millions of the citizens of this nation.'" Libertad v. Welch, 53 F.3d 428, 448 (1st Cir. 1995) " (quoting Cong. Globe, 42d Cong., 1st Sess., 484 (1871)) "[T]here is some legislative history to support the view that § 1985(3) has a broader reach [than just racial discrimination.] Senator Edmunds' statement on the floor of the Senate [was] the clearest expression of this view. He said that if a conspiracy were formed against a man 'because he was a *Democra*t. . . then this section could reach it.' The provision that is now § 1985(3), however, originated in the House. The narrowing amendment, which changed § 1985(3) to its present form, was proposed, debated, and adopted there, and the Senate made only technical changes to the bill. Senator Edmunds' views, since he managed the bill on the floor of the Senate, are not without weight. But we were aware of his views in Griffin, 403 U.S., at 102, n. 9, and still withheld judgment on the question whether § 1985(3), as enacted, went any farther than its central concern — combating the violent and other efforts of the Klan and its allies

to resist and to frustrate the intended effects of the Thirteenth, Fourteenth, and Fifteenth Amendments. Lacking other evidence of congressional intention, we follow the same course here." Carpenters v. Scott, 463 U.S. 825, 836-37 (1983) quoting (Cong. Globe, 42d Cong., 1st Sess., 567 (1871))

In the opening remarks from the congressman who presented the Klu Klux Klan act, he said that the first section of his bill was modeled after the Civil Rights Act of 1866, "that section provides a criminal proceeding in identically the same case as this one provides a civil remedy for, except that the deprivation under color of State law must, under the [1866] civil rights act, have been on account of race, color, or former slavery." 42nd Globe Appendix at 68 (March 28 1871) It does not make sense to assume they intended to have a racial animus requirement in several sections, when congress explicitly made it not a requirement in another section using nearly the same language.

Mr Butler of Massachusetts devoted a great deal of his speech on the house floor to show "that the lawlessness of the South, at first undirected save by its hates, has now become organized in the service of a political party to crush its opponents, and to drive from their borders every friend of a Republican Administration. For this purpose it is organized…" Supra Globe 443 In Tennessee "*Union men"* were "driven off, whipped, and shot." Id.445 In Mississippi a man was lashed simply because he was a union states officer in discharge of his duties" Id. 446 In Florida a man "was

murdered by the Ku Klux Klan, his only offense being that he was so popular with the community among whom he lived that he was the only Republican in the county who could carry it in the coming election against a Democratic competitor." Id. 447" In South Carolina, a man was forced to denounce the Republican Party to save his life." Id. 447

Mr. Coburn of Indiana in the House stated "[t]he commission of isolated outrages is not what is complained of, but of crimes perpetrated by concert and agreement, by men in large numbers acting with a common purpose for the injury of a certain class of citizens *entertaining certain political principles*." The "object is to perpetrate these crimes and to screen from punishment others who are guilty. We find that this society is political in its nature… Id. 457 "however bad it may be to commit crimes, it is an additional wickedness to conspire together to do so. It argues still greater depravity to organize their commission into a system [like Kearney has done], but the very height of criminal enormity is reached when these banded outlaws, with murderous hands, strike at innocent and helpless men for merely entertaining certain *political opinions*. Id. 457

Legrand Perce of the house complained of political motivated violence I.d. 511, but then he took it a step further saying he feared that one day the conservatives would "invent some new and more terrible scourge with which to drive the people… into the ranks of the Democratic party." I.d.512 ("It is our duty to prevent all crime

and preclude the exercise of all violence, and by wise and timely legislation, secure peace, tranquility, and quiet, accompanied by the free and uninterrupted exercise of all the rights and duties appertaining to American citizens throughout the entire country, without regard to the condition, race, or *party affiliation* of the individual citizen.")

Mr Barry of the house stated that "The objective point of the Democratic leaders is to consolidate the vote of the South upon the basis of hatred of the *Yankee* and of the negro, just as it was formerly consolidated upon the basis of slavery… To accomplish this purpose Union men are assaulted and killed in open brawl." 263 Globe Appendix. "The game of the Democracy is to stimulate their repulsive features so as to repel immigration and to perpetuate the reign of barbarism at the South." Id 264. Barry then stated that the Klu Klux divided their targets "into three classes, namely, 'carpet-baggers,' 'scala-wags4,' and [Freedman.]" Id. 265 'Notably, people from the North that shared Kearney's political beliefs were safe in the south. "This name "carpet·bagger" is not applied to the disloyal or timeserving northern

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[4] "The term 'scalawag' is applied to the native loyalist who nobly refused to sympathize with the rebellion, and who has in consequence suffered indignities and hardships the half of which has never yet been told." Id. 265

immigrant who settles upon southern soil and who either joins in the chorus of disloyalty or renounces his manhood by concealing his abhorrence of rebellion. Sir, this opprobrious epithet is given only to those who maintain the unity of this nation" Id. 265

Mr. Williams of the house also stated that the KKK was "[p]urely a political organization in the interest of Democrats, and the results of whose murders, whippings, and assassinations are to inure to the benefit of the Democratic party, either by compelling the loyal negroes and whites to abandon the country or to give their support to the Democratic ticket" Id. 166 Mr. Williams then responded to the denials of political violence by listing the names of thirty-one white people who were attacked or killed for supporting the Republican party. Id. 166-167

Mr. Stevenson of the House listed the same three classes as Barry, and detailed numerous incidents in the reports of political violence, Id. 283-299 including an incident where an old black man was killed because he was a "radical." (Radical at the time seemingly meant the same as what Kearney calls a "social justice warrior.") Id. 296 These examples, and dozens if not hundreds of others that are detailed in the Globe show that the 42nd congress intended to stop politically motivated conspiracies, and that the strict racial animus requirement currently adopted by the court would not have provided a remedy for a large number of outrages detailed in their reports. Therefore, my allegations of discrimination should be adequate. I was

"deprived of due process and equal protection of the laws because of [my] willingness to stand for social justice"; (R.A. 77 at 1) "Aidan Kearney and Katherine Peter conspired against me because of my willingness to stand for social justice." (R.A. 100 at 135) "Facebook and Google developed and deployed machine learning algorithms that discriminate against victims of far-right extremists to maximize short term profits." "Facebook and Google have patents for their algorithms, and provide articles that explain how they maximize engagement, which consequently favors extremists' content. (R.A. 102 153-154) (ADD. 23-26) "On March 16th, 2021, Aidan Kearney says he uses his speech to destroy the online presence of Social Justice warriors to silence their speech." (R.A. 126 at 1)

Distributor immunity is unconstitutional,

"A State is not justified, we said, in permitting a corporation to govern a community of citizens so as to restrict their fundamental liberties. We have also held that where a State delegates an aspect of the elective process to private groups, they become subject to the same restraints as the State. That is to say, when 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) see also Yakus v. United States, 321 U.S. 414, 424 (1944) "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) If the court is unable to interpret the CDA in a way that does not offend the constitution, then the court must rule that the CDA is unconstitutional on it's face or as applied.

Vagueness, Overbreadth

As currently interpreted Section 230 makes it that the Tech Companies who have hundreds of millions of American Citizen users (and any website for that matter) are granted immunity to not only ignore witness intimidation and constitutional violations by people clothed with the power of the law, but these companies can knowingly support and distribute content that violates the constitution. If this is so, then the constitution is worthless. While this is not a traditional overbreadth argument it could be, on March 16th, 2021 Aidan Kearney says he uses his speech to destroy the online presence of Social Justice Warriors to silence their speech. (R.A. 126 at 1)

"The [immunity provision of 47 U.S. Code § 230] is wholly vague and indefinite and hence unconstitutional and void. " Schechter Corp. v. United States, 295 U.S. 495, 508 (1935) "If the Government's view as to the scope of the commerce power be accepted, the field of individual liberty, heretofore regarded as secure from governmental encroachment in certain fundamental aspects, will be greatly restricted

and potentially subject to complete extinction." Id. 507 "This is but an application to an unusually exigent situation of the now familiar principle that the facts which call forth legislative measures may be determinative of the validity of an exercise of legislative power." Id. 514

Constitutional avoidance

But, the CDA does not mention the words distributor or immunity, "Under the doctrine of constitutional avoidance, "federal courts are not to reach constitutional issues where alternative grounds for resolution are available."" Marasco & Nesselbush, LLP v. Collins, 20-1397, at *1 (1st Cir. July 16, 2021) "Courts are obliged to avoid rulings on constitutional questions when non-constitutional grounds will suffice to resolve an issue." Victim Rights Law Ctr. v. Rosenfelt, 988 F.3d 556, 563 (1st Cir. 2021) "The courts are not at liberty to pick and choose among congressional enactments, and when two statutes are capable of coexistence, it is the duty of the courts, absent a clearly expressed congressional intention to the contrary, to regard each as effective." Andrus v. Glover Construction Co., 446 U.S. 608, 618-19, 100 S.Ct. 1905, 64 L.Ed.2d 548 (1980)

. Justice Clarence Thomas recently explained why distributor liability should be intact. "First, Congress expressly imposed distributor liability in the very same Act that included §230…. Second, Congress enacted §230 just one year after

Stratton Oakmont used the terms 'publisher' and 'distributor,' instead of 'primary publisher' and 'secondary publisher.' If, as courts suggest, Stratton Oakmont was the legal backdrop on which Congress legislated, one might expect Congress to use the same terms Stratton Oakmont used Third, had Congress wanted to eliminate both publisher and distributor liability, it could have simply created a categorical immunity." Malwarebytes, Inc. v. Enigma Software Grp. U.S., No. 19-1284 (Oct. 13, 2020)

Experience has shown distributor immunity is a disaster

Facebook has recently been called "the most urgent threats to the American people, to our children and our country's well-being, as well as to people and nations across the globe." (ADD 23) A recent 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 is up from 15% in 2014, and 18% in 2017. This shows that congresses decision to provide broad immunity without safeguards or guidance is certainly failing one of it's stated objectives "to ensure vigorous enforcement of Federal criminal laws to deter and punish trafficking in obscenity, stalking, and harassment by means of computer." 47 U.S. Code § 230 (b)(5) If not all of them; (ADD 16-17)

(1) to promote the continued development of the Internet and other interactive computer services and other interactive media; (2)to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation; (3) to encourage the development of technologies which maximize user control over what information is received by individuals, families, and schools who use the Internet and other interactive computer services; (4) to remove disincentives for the development and utilization of blocking and filtering technologies that empower parents to restrict their children's access to objectionable or inappropriate online material;

The injuries caused by section 230 will reoccur without a favorable decision.

On 2/12/2020, Aidan Kearney said he was not being hyperbolic when he said he would rather die or go to jail then censor his speech because of a court order. (R.A. 35) Aidan Kearney said he would use his blog to harass any company that hires me (R.A. 102 at 157) Aidan Kearney said he is dependent on Facebook in his book "I am Turtleboy" (75-2 at 2), and Facebook's and Google's indifference to his scheme even after being legally aware is the cause of most of the damage. See above. Facebook and Google will claim in their Apellee brief that section 230 makes it that they are allowed to be indifferent to witness intimidation, and constitutional violations. (Docket #s 47&49)

"Beyond workability, the relevant factors in deciding whether to adhere to the principle of stare decisis include the antiquity of the precedent, the reliance interests at stake, and of course whether the decision was well reasoned… We have also examined whether experience has pointed up the precedent's shortcomings." Citizens United v. Fed. Election Comm'n, 558 U.S. 310, 362-63 (2010)

"The Constitution of the United States, with the several amendments thereof, must be regarded as one instrument, all of whose provisions are to be deemed of equal validity. It would, indeed, be most unfortunate if the immunity of the individual States from suits by citizens of other States, provided for in the Eleventh Amendment, were to be interpreted as nullifying those other provisions… Much less can the Eleventh Amendment be successfully pleaded as an invincible barrier to judicial inquiry whether the salutary provisions of the Fourteenth Amendment have been disregarded by state enactments." Prout v. Starr, 188 U.S. 537, 543 (1903) If the Eleventh amendment cannot nullify the Eight, Fifth, and Fourteenth Amendments, then Section 230 of the CDA certainly cannot either. "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) "Under the Constitution no American can, or should, be denied rights fundamental to freedom and citizenship." Id. at 318.

The Defendants' contributed to the illegality.

After Kearney talked to FB employees Phil Perry and Nick Marquez, Facebook put Kearney on a list (either cross-check or whitelist) that allowed Kearney to post more offensive content then normal people without ramifications. FB decided to change their algorithm to maximize the distribution of extreme and violent content right after this lawsuit was filed, and while they knew Kearney was harassing me and my witnesses. FB is aware that the changes they made to their algorithms in 2018 are encouraging, and in some cases forcing publishers to publish divisive and hateful content by dramatically favoring it. By virtue of, the massive number of Kearney's followers, and social media's role in social and occupational opportunities, the Defendants acting in unison held a peculiar power of coercion over the Plaintiff that they would not have had if they had acted independently. FB employees found that FB was removing less than 1% of violent content, and they found that optimizing for growth made their product less enjoyable. FB employees found better designs, but FB executives shelved the designs." (ADD 28-29) see also (R.A. 83 at 36; 85 at 51-69) "Internet companies remain on the hook when they create or develop their own internet content. And they also may face liability to the extent they are 'responsible ... in part, for the creation or the development of' the

offending content on the internet." Lemmon v. Snap, Inc., 995 F.3d 1085, 1093 (9th Cir. 2021) (quoting 47 U.S.C. § 230(f)(3)) and Fair Hous. Council of San Fernando Valley v. Roommates.com, LLC, 521 F.3d 1157, 1162 (9th Cir. 2008) (en banc)

There was no reason for the court to deny EJS motion.

The motion went unopposed, (Add 10 at 71) and would have enabled me to have representation, "Aidan Kearney and or Katherine Peter have consistently harassed anyone willing to help me with a court case against him. (Aff 2-5) [AFF is R.A. 70-76] Aidan Kearney routinely harasses lawyers and or law firms that represent cases against him. (Aff 7-13&16) Aidan Kearney has trained his followers to leave negative comments and bad reviews on law firms' Facebook accounts by telling them in capital letters NOT to do it. (AFF 7b,10, 15) In court Aidan Kearney alleges that this is not his intention and that "the alternative to saying, 'DO NOT CONTACT HIM,' was 'CONTACT HIM.'" Obviously, he could also not link to their Facebook accounts. But even so, when a law firm does not have a Facebook page for Aidan Kearney to send his followers, Aidan Kearney admits that he would have sent his followers to write malicious reviews if they had a Facebook account. (Aff 14b & 23) Aidan Kearney has also directed his followers to harass lawyers in other ways (Aff. 16e, 17c, 18)

Rooker-Feldman doctrine

In a footnote the court suggested that one of the claims "seeks relief from a state court judgment" (ADD 2) 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).

Conclusion

This court should vacate the court's judgment as to dismissing the SAC, and my Motion to govern extra-judicial statements, (Docket 71) and remand the case for further proceedings, at a minimum for limited discovery.

Certificate of Compliance With Type-Volume Limit

This brief complies with Fed. R. App. P. 32, as the font is 14 point Times New Roman

The court approved a motion allowing the brief up to 55 pages on 09/28/2021.

(s) Rian Waters 10/14/2021

Certificate Of Service

I, Rian Waters, hereby certify that on October 14th 2021, I served the attached Appelate brief, Record Appendix, and addendum, on Facebook, Google, Aidan Kearney, and Katherine Peter by Electronic filing for attorneys of record, and by emailing: bristolturtlechick@gmail.com; ryan@mclanelaw.com

Subscribed under the penalties of perjury.

/s/ Rian Waters

Dated October 14th 2021

United States Court of Appeals
For the First Circuit

No. 21-1582

RIAN G. WATERS,

Plaintiff - Appellant,

v.

FACEBOOK, INC.; GOOGLE LLC; AIDAN KEARNEY,

Defendants - Appellees,

JEREMY HALEY; MARTHA SMITH-BLACKMORE; WILLIAM HIGGINS; JIM DALTON; MAURA TRACY HEALEY; JOHN DOES (1-10),

Defendants.

Addendum

Table Of Contents

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

RIAN G. WATERS, Plaintiff, v. FACEBOOK, INC., GOOGLE LLC, AIDAN KEARNEY, KATHERINE PETER, JEREMY HALEY, MARTHA SMITH-BLACKMORE, WILLIAM HIGGINS, JIM DALTON, MAURA HEALY, and JOHN DOES 1-10, Defendants.	Civil Action No. 20-30168-MGM

ORDER

May 11, 2021

MASTROIANNI, U.S.D.J.

This Order addresses several motions pending before the court. First, [81] Plaintiff's Third Motion to Amend his First Motion to File a Second Amended Complaint is GRANTED. *See* Fed. R. Civ. P. 15(a)(2). Plaintiff's Proposed Second Amended Complaint filed at Docket Number 81-1 is the operative complaint in this case. This court granted the *pro se* Plaintiff's motion to proceed *in forma pauperis* on November 16, 2020. *See* 28 U.S.C. § 1915(a). Pursuant to that same statute, the Second Amended Complaint is hereby DISMISSED WITH PREJUDICE. *See id.* at §1915(e)(2)(B). The remaining motions are DENIED AS MOOT.[1]

[1] Specifically, the following motions are denied as moot: [17] Plaintiff's Emergency Ex Parte Motion for Temporary Restraining Order; [36, 37] Defendants' Motions to Dismiss the Complaint; [40] Assented-to Motion for Extension of Time to Answer the Complaint; [42] Plaintiff's Motion to Partially Stay Proceedings; [47, 49, 52, 62] Defendants' Motions to Dismiss the First Amended Complaint; [61] Plaintiff's Motion to File an Oversized Brief; [67] Plaintiff's Second Motion for Extension of Time to Oppose Motion to Dismiss; [69] Plaintiff's Motion for Extra Time to Oppose

"[T]he court shall dismiss the case at any time if the court determines that . . . the action . . . (i) is frivolous or malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2)(B); *see Truman v. Armstrong*, No. 18-1095, 2018 WL 11241356, at *1 (1st Cir. Aug. 7, 2018) (affirming sua sponte dismissal pursuant to 28 U.S.C. § 1915).

The court accepts as true all well-plead allegations in the Second Amended Complaint, drawing reasonable inferences in Plaintiff's favor. *See Evergreen Partnering Grp., Inc. v. Pactiv Corp.*, 720 F.3d 33, 36 (1st Cir. 2013). Because Plaintiff proceeds *pro se*, the court interprets his allegations liberally. *See Haines v. Kerner*, 404 U.S. 519, 520-21 (1972).[2]

The Second Amended Complaint does not "contain sufficient factual matter, accepted as true to state a claim to relief that is plausible on its face." *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation marks omitted). Plaintiff alleges civil RICO, federal civil rights, and pendant state law claims against Defendants Facebook Inc., Google LLC, Aidan Kearney, and Katherine Peter. (*See* Dkt. No. 81-1, Second Amended Complaint ("SAC").) Plaintiff's claims pursuant to 42 U.S.C. § 1983 (for violations of his First, Fourteenth, and Eighth Amendment rights) fail because Defendants are not state actors and Plaintiff does not allege that their conduct is "fairly attributable" to the state. *See Klos v. Klos*, No. 20-10757, 2020 WL 6291476, at *4 (D. Mass. Oct. 27,

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Motion to Dismiss; [71] Plaintiff's Second Motion for Injunctive Relief; [75] Plaintiff's First Motion for Declaratory Judgment; and [85] Plaintiff's Motion for Discovery Subpoena. Plaintiff voluntarily withdrew [64] Plaintiff's First Motion to file a Second Amended Complaint and [72] Plaintiff's Second Motion to Amend his Motion to file a Second Amended Complaint. (*See* Dkt. No. 81 at 3.)

[2] The court notes that Plaintiff filed a defamation and libel suit against Aidan Kearney and his corporations in Hampden County Superior Court. Plaintiff is presently appealing that court's decision granting defendants summary judgment. *See Waters v. Kearney*, No. 2020-P-0088 (Mass. App. Ct.). To the extent that Plaintiff's Second Amended Complaint seeks relief from a state court judgment, such claim would be barred by the *Rooker-Feldman* doctrine. *See Linardon v. Wolohojian*, No. 20-10969, 2020 WL 6586629, at *2 (D. Mass. Nov. 10, 2020) (dismissing pro se action under *Rooker-Feldman* and *Younger* abstention doctrines).

2020) (quoting *Lugar v. Edmondson Oil Co., Inc.*, 457 U.S. 922, 937 (1982)) (dismissing Section 1983 claims).

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. *See Perez-Sanchez v. Pub. Building Auth.*, 531 F.3d 104, 107 (1st Cir. 2008) (holding that "a claim under § 1985(3) requires some racial, or perhaps otherwise class-based, invidiously discriminatory animus behind the conspirators' action") (internal quotation marks omitted). The Second Amended Complaint alleges that Defendants Google LLC and Facebook Inc. were motivated by profit and turned a blind eye to Defendants Kearney's and Peter's negative posts about Plaintiff. (*See* SAC at ¶ 126 ("Conspiratorial agreement can be inferred or implied from the circumstances that Google and Facebook share the common purpose with Aidan Kearney of continuing to profit from public shaming advertising revenue . . . .").) These allegations do not amount to a conspiracy under Section 1985. Nor does Plaintiff adequately allege a claim against Defendants Facebook Inc. and Google LLC for knowing about a Section 1985 conspiracy and refusing to prevent it. *See* 42 U.S.C. § 1986.

The Second Amended Complaint also fails to state a plausible basis for relief under the civil RICO statute. To plead a civil RICO action, a plaintiff must allege non-conclusory facts supporting the following elements: "(1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity." *See DeMauro v. DeMauro*, 215 F.3d 1311, 2000 WL 231255 at *2 (1st Cir. Feb. 16, 2000) (affirming dismissal of civil RICO claims) (internal quotation marks omitted). "A pattern of racketeering activity requires at least two predicate acts" as defined by 18 U.S.C. § 1961. *Id.* As predicate acts, Plaintiff alleges the following: unidentified commenters on Defendant Kearney's blog posted death threats against him (SAC at ¶¶ 106-107); Defendant Kearney tried to "delay an official proceeding against the Ludlow jail" involving Plaintiff's request for gluten-free meals by making fun

of Plaintiff in a blog post (SAC ¶ 109); Defendant Kearney, through negative blog posts, "knowingly used intimidation . . . to influence or delay" Plaintiff's submission of court filings (SAC at ¶ 111); Defendant Google LLC tried to persuade him to drop the instant lawsuit (SAC ¶¶ 80, 112); Defendant Kearney "harassed party and witness Katherine Peter several times" (SAC ¶ 113); Defendant Facebook Inc. did not remove objectionable content about Plaintiff (SAC ¶ 114); and Defendant Kearney used his blog to "harass and retaliate" against three individuals in unrelated matters (SAC ¶¶ 116-18). None of these allegations constitute predicate acts under RICO let alone a pattern of racketeering. *See* 18 U.S.C. § 1961. Plaintiff's allegations of a civil RICO conspiracy also fail because he does not allege any agreement among Defendants.

Having dismissed Plaintiff's federal claims, the court declines to exercise supplemental jurisdiction over Plaintiff's state law claims against Defendants Google LLC and Facebook Inc. for violation of the implied warranty of merchantability and gross negligence. *See* 28 U.S.C. § 1367(c).[3]

The Second Amended Complaint does not allege any claims against Defendants Jeremy Haley, Martha Smith-Blackmore, William Higgins, Jim Dalton, Maura Healy, or the John Does, and they are dismissed.

For the reasons set forth above, Plaintiff's Third Motion to Amend his First Motion to File a Second Amended Complaint is GRANTED; the Second Amended Complaint is DISMISSED WITH PREJUDICE; and the remaining motions are DENIED AS MOOT. The court certifies that an *in forma pauperis* appeal by Plaintiff from this dismissal would not be taken in good faith. *See* 28 U.S.C. § 1915(a)(3); *see also Kersey v. Trump*, No. 18-1056, 2018 WL 11303565, at *1 (1st Cir. Sept. 4, 2018) (affirming certification and denying IFP status for appeal).

The Clerk of Court is ordered to close this case.

[3] The court lacks diversity jurisdiction pursuant to 28 U.S.C. § 1332.

It is So Ordered.

/s/ Mark G. Mastroianni
MARK G. MASTROIANNI
United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

RIAN G. WATERS, Plaintiff,	)	
V.	)	Civil Action
	)	No. 3:20-cv-30168-MGM
FACEBOOK, INC., et al. Defendants.	)	

ORDER OF DISMISSAL

May 11, 2021

MASTROIANNI, U.S. D.J.

Pursuant to the court's order of this date ordering this Case to be closed, it is hereby ordered that this case be closed.

It is so ordered.

/s/ Mark G. Mastroianni
U.S. District Court Judge

Defendant

Maura Healey

represented by **Andrew M. Batchelor**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

John Does (1-10)

Date Filed	#	Docket Text
10/26/2020	1	COMPLAINT against All Defendants, filed by Rian Waters. (Attachments: # 1 Civil Cover Sheet, # 2 Category Sheet)(Zamorski, Michael) (Entered: 10/27/2020)
10/26/2020	2	MOTION for Leave to Proceed in forma pauperis by Rian Waters.(Zamorski, Michael) (Entered: 10/27/2020)
10/27/2020	3	ELECTRONIC NOTICE of Case Assignment. Judge Mark G. Mastroianni assigned to case. If the trial Judge issues an Order of Reference of any matter in this case to a Magistrate Judge, the matter will be transmitted to Magistrate Judge Katherine A. Robertson. (Lindsay, Maurice) (Entered: 10/27/2020)
11/13/2020	4	Plaintiff's Emergency Ex Parte MOTION for Temporary Restraining Order & Preliminary Injunction by Rian Waters.(Zamorski, Michael) (Entered: 11/13/2020)
11/13/2020	5	MEMORANDUM in Support re 4 MOTION for Temporary Restraining Order filed by Rian Waters. (Zamorski, Michael) (Entered: 11/13/2020)
11/13/2020	6	AFFIDAVIT in Support re 4 MOTION for Temporary Restraining Order filed by Rian Waters. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C)(Zamorski, Michael) (Entered: 11/13/2020)
11/13/2020	7	Judge Mark G. Mastroianni: ELECTRONIC ORDER entered. REFERRING MOTION 2 MOTION for Leave to Proceed in forma pauperis filed by Rian Waters to Magistrate Judge Robertson(Lindsay, Maurice) Motions referred to Katherine A. Robertson. (Entered: 11/13/2020)
11/16/2020	8	Magistrate Judge Katherine A. Robertson: ELECTRONIC ORDER entered granting 2 Motion for Leave to Proceed in forma pauperis. (Lindsay, Maurice) (Entered: 11/16/2020)
11/16/2020	9	Summons Issued as to Jim Dalton, John Does (1-10), Facebook Inc., Google LLC., Jeremy Haley, Maura Healey, William Higgins, Aidan Kearney, Katherine Peter, Martha Smith-Blackmore. **Counsel receiving this notice electronically should download this summons, complete one for each defendant and serve it in accordance with Fed.R.Civ.P. 4 and LR 4.1. Summons will be mailed to plaintiff(s) not receiving notice electronically for completion of service.** (Lindsay, Maurice) (Entered: 11/16/2020)
11/17/2020	10	Copy re 9 Summons Issued, emailed to Rian Waters on 1/17/20 watersrian@gmail.com (Lindsay, Maurice) (Entered: 11/17/2020)
11/18/2020	11	Judge Mark G. Mastroianni: ELECTRONIC ORDER entered denying without prejudice 4 Plaintiff's Emergency Ex Parte Motion for Temporary Restraining Order & Preliminary Injunction. Pursuant to Rule 65(b) of the Federal Rules of Civil Procedure, a temporary restraining order may only be issued without notice to the adverse party if "specific facts in an affidavit or verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition" and the movant provides written notice to the court regarding "any efforts made to give notice and the reasons why it should not be required." Plaintiff has not provided any information about his efforts to notify defendants of his motion for emergency relief nor has he explained why such notice should not be required. Without such information the court is unable to grant Plaintiff's motion. Plaintiffs motion is denied without prejudice and Plaintiff may refile the motion after Defendants have been served or with an explanation for why the motion should be granted without notice. (Lindsay, Maurice) (Entered: 11/19/2020)
11/19/2020	12	Copy re 11 Order on Motion for TRO,,,, emailed to Rian Waters on 11/19/20 at watersrian@gmail.com (Lindsay, Maurice) (Entered: 11/19/2020)
11/25/2020	13	NOTICE of Appearance by Andrew M. Batchelor on behalf of Jim Dalton, Maura Healey (Batchelor, Andrew) (Entered: 11/25/2020)

11/25/2020	14	MOTION for Extension of Time to 1/8/2021 to File Answer *or Motion to Dismiss* by Jim Dalton, Maura Healey.(Batchelor, Andrew) (Entered: 11/25/2020)
12/01/2020	15	SUMMONS Returned Executed Facebook Inc. served on 11/18/2020, answer due 12/9/2020. (Zamorski, Michael) (Entered: 12/01/2020)
12/01/2020	16	SUMMONS Returned Executed Google LLC. served on 11/18/2020, answer due 12/9/2020. (Zamorski, Michael) (Entered: 12/01/2020)
12/01/2020	17	Plaintiff's Emergency Ex Parte MOTION for Temporary Restraining Order & Preliminary Injunction by Rian Waters.(Zamorski, Michael) (Entered: 12/01/2020)
12/01/2020	18	MEMORANDUM in Support re 17 MOTION for Temporary Restraining Order filed by Rian Waters. (Zamorski, Michael) (Entered: 12/01/2020)
12/01/2020	19	AFFIDAVIT in Support re 17 MOTION for Temporary Restraining Order filed by Rian Waters. (Attachments: # 1 Exhibit A, # 2 Exhibit B)(Zamorski, Michael) (Entered: 12/01/2020)
12/01/2020	20	NOTICE of Appearance by Joseph H. Aronson on behalf of Facebook Inc. (Aronson, Joseph) (Entered: 12/01/2020)
12/02/2020	21	MOTION for Leave to Appear Pro Hac Vice for admission of Matan Shacham Filing fee: $ 200, receipt number 0101-8534980 by Facebook Inc..(Aronson, Joseph) (Entered: 12/02/2020)
12/02/2020	22	MOTION for Leave to Appear Pro Hac Vice for admission of Erica Miranda Filing fee: $ 100, receipt number 0101-8535003 by Facebook Inc..(Aronson, Joseph) (Entered: 12/02/2020)
12/02/2020	23	CERTIFICATE OF CONSULTATION pursuant to LR 7.1 re 22 MOTION for Leave to Appear Pro Hac Vice for admission of Erica Miranda Filing fee: $ 100, receipt number 0101-8535003 by Joseph H. Aronson on behalf of Facebook Inc.. (Aronson, Joseph) (Entered: 12/02/2020)
12/02/2020	24	CERTIFICATE OF CONSULTATION pursuant to LR 7.1 re 21 MOTION for Leave to Appear Pro Hac Vice for admission of Matan Shacham Filing fee: $ 200, receipt number 0101-8534980 by Joseph H. Aronson on behalf of Facebook Inc.. (Aronson, Joseph) (Entered: 12/02/2020)
12/03/2020	25	STIPULATION *Jt Stipulation and Order to Extend Time for D Facebook to Answer or Move to Dismiss Complaint* by Facebook Inc.. (Aronson, Joseph) (Entered: 12/03/2020)
12/03/2020	26	NOTICE of Appearance by Alan D. Rose, Sr on behalf of Google LLC. (Rose, Alan) (Entered: 12/03/2020)
12/03/2020	27	NOTICE of Appearance by Laura B. Kirshenbaum on behalf of Google LLC. (Kirshenbaum, Laura) (Entered: 12/03/2020)
12/04/2020	28	CORPORATE DISCLOSURE STATEMENT by Google LLC. identifying Corporate Parent Alphabet Inc., Corporate Parent XXVI Holdings Inc. for Google LLC... (Kirshenbaum, Laura) (Entered: 12/04/2020)
12/04/2020	29	MOTION for Leave to Appear Pro Hac Vice for admission of Jason B. Mollick Filing fee: $ 100, receipt number 0101-8539597 by Google LLC.. (Attachments: # 1 Affidavit Certificate of Attorney Jason B. Mollick, # 2 Exhibit Certificate of Good Standing of Attorney Jason B. Mollick)(Kirshenbaum, Laura) (Entered: 12/04/2020)
12/04/2020	30	MEMORANDUM in Opposition re 17 MOTION for Temporary Restraining Order filed by Google LLC.. (Attachments: # 1 Exhibit A)(Kirshenbaum, Laura) (Entered: 12/04/2020)
12/08/2020	31	STIPULATION *and Proposed Order to Extend Time for Defendant Google LLC to Answer or Move to Dismiss the Complaint* by Google LLC.. (Kirshenbaum, Laura) (Entered: 12/08/2020)
12/09/2020	32	CORPORATE DISCLOSURE STATEMENT by Facebook Inc.. (Aronson, Joseph) (Entered: 12/09/2020)
12/11/2020	33	Opposition re 17 MOTION for Temporary Restraining Order filed by Facebook Inc.. (Aronson, Joseph) (Entered: 12/11/2020)
12/14/2020	34	CERTIFICATE OF SERVICE pursuant to LR 5.2 by Facebook Inc. . (Aronson, Joseph) (Entered: 12/14/2020)
12/14/2020	35	Judge Mark G. Mastroianni: ELECTRONIC ORDER entered granting 14 Defendants Attorney General

		Maura Healey and Lt. James Dalton's Motion for Extension of Time to Answer or Move to Dismiss the Complaint. In addition, in light of the stipulations filed at Dkt. Nos. 25 and 31, the deadline to file a response to Plaintiff's Complaint as to Defendants Facebook and Google also shall be extended to January 8, 2021. If Plaintiff amends his complaint before that date, all Defendants' responses shall be filed within 21 days of service of the amended complaint. (Lindsay, Maurice) (Entered: 12/14/2020)
01/08/2021	36	MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM by Google LLC.. (Attachments: # 1 Exhibit A)(Kirshenbaum, Laura) (Entered: 01/08/2021)
01/08/2021	37	MOTION to Dismiss by Facebook Inc..(Aronson, Joseph) (Entered: 01/08/2021)
01/08/2021	38	MEMORANDUM in Support re 37 MOTION to Dismiss filed by Facebook Inc.. (Aronson, Joseph) (Entered: 01/08/2021)
01/08/2021	39	CERTIFICATE OF CONSULTATION pursuant to LR 7.1 re 38 Memorandum in Support of Motion by Joseph H. Aronson on behalf of Facebook Inc.. (Aronson, Joseph) (Entered: 01/08/2021)
01/08/2021	40	Assented to MOTION for Extension of Time to 1/11/2021 to File Answer *or move to dismiss* by Jim Dalton, Maura Healey.(Batchelor, Andrew) (Entered: 01/08/2021)
01/11/2021	41	AMENDED COMPLAINT against All Defendants, filed by Rian Waters.(Zamorski, Michael) (Entered: 01/12/2021)
01/11/2021	42	MOTION to Partially Stay the Proceeding by Rian Waters.(Zamorski, Michael) (Entered: 01/12/2021)
01/11/2021	43	MOTION to Give Pro Se Plaintiff Rain Waters Access to the Computer Filing System by Rian Waters. (Zamorski, Michael) (Entered: 01/12/2021)
01/12/2021	44	Judge Mark G. Mastroianni: ELECTRONIC ORDER entered granting 21 Motion for Leave to Appear Pro Hac Vice Added Matan Shacham. **Attorneys admitted Pro Hac Vice must register for electronic filing if the attorney does not already have an ECF account in this district. To register go to the Court website at www.mad.uscourts.gov. Select Case Information, then Electronic Filing (CM/ECF) and go to the CM/ECF Registration Form.** (Figueroa, Tamara) (Entered: 01/12/2021)
01/12/2021	45	Judge Mark G. Mastroianni: ELECTRONIC ORDER entered granting 22 Motion for Leave to Appear Pro Hac Vice Added Erica Miranda. **Attorneys admitted Pro Hac Vice must register for electronic filing if the attorney does not already have an ECF account in this district. To register go to the Court website at www.mad.uscourts.gov. Select Case Information, then Electronic Filing (CM/ECF) and go to the CM/ECF Registration Form.** (Figueroa, Tamara) (Entered: 01/12/2021)
01/12/2021	46	Judge Mark G. Mastroianni: ELECTRONIC ORDER entered granting 29 Motion for Leave to Appear Pro Hac Vice Added Jason B. Mollick, Esq.. **Attorneys admitted Pro Hac Vice must register for electronic filing if the attorney does not already have an ECF account in this district. To register go to the Court website at www.mad.uscourts.gov. Select Case Information, then Electronic Filing (CM/ECF) and go to the CM/ECF Registration Form.** (Figueroa, Tamara) (Entered: 01/12/2021)
01/25/2021	47	MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM by Google LLC..(Kirshenbaum, Laura) (Entered: 01/25/2021)
01/25/2021	48	MEMORANDUM in Support re 47 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by Google LLC.. (Kirshenbaum, Laura) (Entered: 01/25/2021)
01/25/2021	49	MOTION to Dismiss *First Amended Complaint* by Facebook Inc..(Miranda, Erica) (Entered: 01/25/2021)
01/25/2021	50	MEMORANDUM in Support of 49 MOTION to Dismiss *First Amended Complaint* by Facebook Inc.. (Miranda, Erica) Modified on 1/26/2021 to correct the text to reflect the document that is being filed a Memorandum in support of the Motion to Dismiss, not a Motion to Dismiss. (Finn, Mary). Modified on 1/26/2021 to link to document 49 . (Finn, Mary). (Entered: 01/25/2021)
01/25/2021	51	CERTIFICATE OF CONSULTATION pursuant to LR 7.1 re 49 MOTION to Dismiss *First Amended Complaint*, 50 MOTION to Dismiss *First Amended Complaint First Amended Complaint* by Erica Miranda on behalf of Facebook Inc.. (Miranda, Erica) (Entered: 01/25/2021)
01/25/2021	52	MOTION to Dismiss , MOTION to Dismiss for Lack of Jurisdiction (Responses due by 2/8/2021) by Jim Dalton, Maura Healey.(Batchelor, Andrew) (Entered: 01/25/2021)
01/25/2021	53	MEMORANDUM in Support re 52 MOTION to Dismiss MOTION to Dismiss for Lack of Jurisdiction

		filed by Jim Dalton, Maura Healey. (Batchelor, Andrew) (Entered: 01/25/2021)
01/25/2021	54	Opposition re 42 MOTION to Stay filed by Jim Dalton, Maura Healey. (Batchelor, Andrew) (Entered: 01/25/2021)
02/02/2021	55	NOTICE of Appearance by Ryan P. McLane on behalf of Aidan Kearney (McLane, Ryan) (Entered: 02/02/2021)
02/04/2021	56	MOTION for Extension of Time to 02/12/2021 to File Response/Reply as to 49 MOTION to Dismiss *First Amended Complaint*, 47 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM by Rian Waters.(Zamorski, Michael) (Entered: 02/05/2021)
02/04/2021	57	SUMMONS Returned Executed Aidan Kearney served on 1/22/2021, answer due 2/12/2021. (Zamorski, Michael) (Entered: 02/05/2021)
02/08/2021	58	Judge Mark G. Mastroianni: ELECTRONIC ORDER entered granting 56 Plaintiffs Motion for Extra Time to Oppose Facebook and Googles Motions to Dismiss. Plaintiff's oppositions are due by February 12, 2021. (Lindsay, Maurice) (Entered: 02/08/2021)
02/08/2021	59	Judge Mark G. Mastroianni: ELECTRONIC ORDER entered granting 43 Motion to Give Pro Se Plaintiff Rian Waters Access to the Computer Filing System. Plaintiff is directed to follow up with the Clerk's Office. (Lindsay, Maurice) (Entered: 02/08/2021)
02/08/2021	60	Copy re 59 Order on Motion for Miscellaneous Relief, 58 Order on Motion for Extension of Time to File Response/Reply mailed to Rian Waters on 2/8/21. (Lindsay, Maurice) (Entered: 02/08/2021)
02/09/2021	61	MOTION for Leave for Oversized Opposition Briefs for Facebook and Google's Motions to Dismiss. by Rian Waters.(Zamorski, Michael) (Entered: 02/09/2021)
02/12/2021	62	MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM by Aidan Kearney.(McLane, Ryan) (Entered: 02/12/2021)
02/12/2021	63	MEMORANDUM in Support re 62 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by Aidan Kearney. (McLane, Ryan) (Entered: 02/12/2021)
02/22/2021	64	First MOTION for Leave to File *Second Amended Complaint* by Rian G. Waters. (Attachments: # 1 proposed second amended complaint, # 2 Exhibit, # 3 Exhibit, # 4 Exhibit, # 5 Exhibit, # 6 Exhibit, # 7 Exhibit, # 8 Exhibit, # 9 Exhibit)(Waters, Rian) (Entered: 02/22/2021)
02/22/2021	65	First Opposition re 47 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by Rian G. Waters. (Waters, Rian) (Entered: 02/22/2021)
02/22/2021	66	First Opposition re 49 MOTION to Dismiss *First Amended Complaint* filed by Rian G. Waters. (Waters, Rian) (Entered: 02/22/2021)
02/22/2021	67	Second MOTION for Extension of Time to 2/22/2021 to Oppose Google's and Facebooks motion's to dismiss *First Amended Complaint* by Rian G. Waters. (Attachments: # 1 Exhibit Exhibit A)(Waters, Rian) (Entered: 02/22/2021)
02/23/2021	68	First Opposition re 62 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by Rian G. Waters. (Waters, Rian) (Entered: 02/23/2021)
03/04/2021	69	MOTION for Extra Time to Oppose Google's Motion to Dismiss by Rian G. Waters. (Attachments: # 1 Exhibit A)(Zamorski, Michael) (Entered: 03/04/2021)
03/08/2021	70	Opposition re 64 First MOTION for Leave to File *Second Amended Complaint* filed by Google LLC.. (Kirshenbaum, Laura) (Entered: 03/08/2021)
03/09/2021	71	Second MOTION for Injunctive Relief *LOCAL RULE 83.2.2* by Rian G. Waters. (Attachments: # 1 Memorandum, # 2 Affidavit Affidavit)(Waters, Rian) (Entered: 03/09/2021)
03/11/2021	72	Second MOTION to Amend 64 First MOTION for Leave to File *Second Amended Complaint* by Rian G. Waters. (Attachments: # 1 Third Amended Complaint)(Waters, Rian) (Entered: 03/11/2021)
03/15/2021	73	NOTICE by Rian G. Waters *of constitutional challenge* (Waters, Rian) (Entered: 03/15/2021)
03/15/2021	74	Note: Entry was filed in error removed Lindsay, Maurice). (Entered: 03/15/2021)
03/18/2021	75	First MOTION for Declaratory Judgment by Rian G. Waters. (Attachments: # 1 Memorandum, # 2

		Affidavit)(Waters, Rian) (Entered: 03/18/2021)
03/22/2021	76	STIPULATION *And Proposed Order* by Facebook Inc.. (Aronson, Joseph) (Entered: 03/22/2021)
03/26/2021	77	Opposition re 75 First MOTION for Declaratory Judgment filed by Google LLC.. (Kirshenbaum, Laura) (Entered: 03/26/2021)
04/01/2021	78	NOTICE by Facebook Inc. (Aronson, Joseph) (Entered: 04/01/2021)
04/05/2021	79	NOTICE of Correction by court staff Removed Document filed in error on 4/6/2021 (Lindsay, Maurice). (Entered: 04/06/2021)
04/08/2021	80	SUMMONS Returned Executed Katherine Peter served on 3/30/2021, answer due 4/20/2021. (Waters, Rian) (Entered: 04/08/2021)
04/15/2021	81	Third MOTION to Amend 64 First MOTION for Leave to File *Second Amended Complaint* by Rian G. Waters. (Attachments: # 1 Proposed second amended complaint, # 2 Exhibit A, # 3 Exhibit B, # 4 Exhibit C, # 5 Exhibit D, # 6 Exhibit E, # 7 Exhibit F, # 8 Exhibit G, # 9 Exhibit H)(Waters, Rian) (Entered: 04/15/2021)
04/15/2021	82	Opposition re 81 Third MOTION to Amend 64 First MOTION for Leave to File *Second Amended Complaint* filed by Google LLC.. (Kirshenbaum, Laura) (Entered: 04/15/2021)
04/18/2021	83	First REPLY to Response to 75 First MOTION for Declaratory Judgment , 81 Third MOTION to Amend 64 First MOTION for Leave to File *Second Amended Complaint* filed by Rian G. Waters. (Attachments: # 1 Reply brief)(Waters, Rian) (Entered: 04/18/2021)
04/18/2021	84	Errata by Rian G. Waters to 83 Reply to Response to Motion, . (Waters, Rian) (Entered: 04/18/2021)
04/20/2021	85	First MOTION for Discovery *Subpoena* by Rian G. Waters.(Waters, Rian) (Entered: 04/20/2021)
05/04/2021	86	Opposition re 72 Second MOTION to Amend 64 First MOTION for Leave to File *Second Amended Complaint* , 64 First MOTION for Leave to File *Second Amended Complaint*, 81 Third MOTION to Amend 64 First MOTION for Leave to File *Second Amended Complaint* filed by Aidan Kearney. (McLane, Ryan) (Entered: 05/04/2021)
05/04/2021	87	Opposition re 85 First MOTION for Discovery *Subpoena* filed by Aidan Kearney. (McLane, Ryan) (Entered: 05/04/2021)
05/04/2021	88	First REPLY to Response to 85 First MOTION for Discovery *Subpoena*, 81 Third MOTION to Amend 64 First MOTION for Leave to File *Second Amended Complaint to Kearney's oppositions* filed by Rian G. Waters. (Attachments: # 1 Reply to Kearney's oppositions)(Waters, Rian) (Entered: 05/04/2021)
05/11/2021	89	Judge Mark G. Mastroianni: ORDER entered as follows: For the reasons stated, Plaintiffs Third Motion to Amend his First Motion to File a Second Amended Complaint is GRANTED; the Second Amended Complaint is DISMISSED WITH PREJUDICE; and the remaining motions are DENIED AS MOOT. The court certifies that an in forma pauperis appeal by Plaintiff from this dismissal would not be taken in good faith. See 28 U.S.C. § 1915(a)(3); see also Kersey v. Trump, No. 18-1056, 2018 WL 11303565, at *1 (1st Cir. Sept. 4, 2018) (affirming certification and denying IFP status for appeal). The Clerk of Court is ordered to close this case. See the attached order for complete details. (Lindsay, Maurice) (Entered: 05/11/2021)
05/11/2021	90	Judge Mark G. Mastroianni: ORDER entered. Order of Dismissal. (Lindsay, Maurice) (Entered: 05/11/2021)
05/13/2021	91	First MOTION to Set Aside Judgment *Rule 59e Alter or Amend* by Rian G. Waters. (Attachments: # 1 Memorandum)(Waters, Rian) (Entered: 05/13/2021)
05/27/2021	92	Opposition re 91 First MOTION to Set Aside Judgment *Rule 59e Alter or Amend* filed by Facebook Inc.. (Miranda, Erica) (Entered: 05/27/2021)
07/22/2021	93	Judge Mark G. Mastroianni: ELECTRONIC ORDER entered denying 91 Plaintiff's Motion to Alter or Amend the Judgment Pursuant to Rule 59(e). A motion to alter or amend a judgment under Federal Rule of Civil Procedure 59(e) is "an extraordinary remedy which should be used sparingly." *See* Charles Alan Wright, et al., 11 Federal Practice and Procedure § 2810.1 (3d ed. Apr. 2021). "To obtain relief, the movant must demonstrate that newly discovered evidence (not previously available) has come to light or that the rendering court committed a

		manifest error of law." *Palmer v. Champion Mortgage*, 465 F.3d 24, 30 (1st Cir. 2006) (denying motion). A Rule 59(e) motion "may not be used to relitigate old matters, [or] to raise arguments." Federal Practice and Procedure § 2810.1 (internal citations omitted). Plaintiff attempts to do both in his Rule 59(e) motion. After reviewing its May 11, 2021 order (Dkt. No. 89), Plaintiff's memorandum (Dkt. No. 91-1), and Defendant Facebook's opposition (Dkt. No. 92), the court does not find any basis to alter or amend the judgment in this case. The clerk of court is ordered to close this case. (Lindsay, Maurice) (Entered: 07/23/2021)
07/29/2021	94	NOTICE OF APPEAL as to 90 Order Dismissing Case, 93 Order on Motion to Set Aside Judgment,,,, 89 Order on Motion to Dismiss for Failure to State a Claim,,,,,, Order on Motion for Extension of Time to Answer,,, Order on Motion to Stay,,,,,,,,,,,, Order on Motion to Dismiss/Lack of Jurisdiction,,, Order on Motion for Leave to File,,,,,,,,,,,,,,, Order on Motion for Injuctive Relief,,, Order on Motion to Amend,,,,,, Order on Motion for Declaratory Judgment,,, Order on Motion for Discovery,,, Order on Motion for TRO,, by Rian G. Waters NOTICE TO COUNSEL: A Transcript Report/Order Form, which can be downloaded from the First Circuit Court of Appeals web site at http://www.ca1.uscourts.gov MUST be completed and submitted to the Court of Appeals. **Counsel shall register for a First Circuit CM/ECF Appellate Filer Account at http://pacer.psc.uscourts.gov/cmecf. Counsel shall also review the First Circuit requirements for electronic filing by visiting the CM/ECF Information section at http://www.ca1.uscourts.gov/cmecf. US District Court Clerk to deliver official record to Court of Appeals by 8/18/2021. (Waters, Rian) (Entered: 07/29/2021)**
07/30/2021	95	Certified and Transmitted Abbreviated Electronic Record on Appeal to US Court of Appeals re 94 Notice of Appeal. (Paine, Matthew) (Entered: 07/30/2021)
07/30/2021	96	USCA Case Number 21-1582 for 94 Notice of Appeal, filed by Rian G. Waters. (Paine, Matthew) (Entered: 07/30/2021)
08/04/2021	97	USCA Appeal Fees received $ 505 receipt number SPR004654 re 94 Notice of Appeal filed by Rian G. Waters (Zamorski, Michael) (Entered: 08/04/2021)
09/19/2021	98	MOTION for Leave to File Excess Pages by Rian G. Waters. (Attachments: # 1 Rule 60b Motion, # 2 Rule 60b Memo, # 3 Rule 60b Affidavit)(Waters, Rian) (Entered: 09/19/2021)

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PACER Login:	Bigrivers42	**Client Code:**	
Description:	Docket Report	**Search Criteria:**	3:20-cv-30168-MGM
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Civil Rights Act of 1866

CHAP. XXXI.—An Act to protect all Persons in the United States in their Civil Rights, and furnish the Means of their Vindication.

Sec. 2. And be it further enacted, That any person who, under color of any law, statute, ordinance, regulation, or custom, shall subject, or cause to be subjected, any inhabitant of any State or Territory to the deprivation of any right secured or protected by this act, or to different punishment, pains, or penalties on account of such person having at any time been held in a condition of slavery or involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, or by reason of his color or race, than is prescribed for the punishment of white persons, shall be deemed guilty of a misdemeanor, and, on conviction, shall be punished by fine not exceeding one thousand dollars, or imprisonment not exceeding one year, or both, in the discretion of the court.

42 U.S. Code § 1983 - Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

42 U.S. Code § 1985 - Conspiracy to interfere with civil rights

(2)Obstructing justice; intimidating party, witness, or juror

If two or more persons in any State or Territory conspire 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, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

(3) Depriving persons of rights or privileges

If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of

the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, 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. Code § 1986 - Action for neglect to prevent

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; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action; and if the death of any party be caused by any such wrongful act and neglect, the legal representatives of the deceased shall have such action therefor, and may recover not exceeding $5,000 damages therein, for the benefit of the widow of the deceased, if there be one, and if there be no widow, then for the benefit of the next of kin of the deceased. But no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued.

(R.S. § 1981.)

47 U.S. Code § 230 - Protection for private blocking and screening of offensive material

(a)Findings

The Congress finds the following:

(1)The rapidly developing array of Internet and other interactive computer services available to individual Americans represent an extraordinary advance in the availability of educational and informational resources to our citizens.

(2)These services offer users a great degree of control over the information that they receive, as well as the potential for even greater control in the future as technology develops.

(3)The Internet and other interactive computer services offer a forum for a true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for intellectual activity.

(4)The Internet and other interactive computer services have flourished, to the benefit of all Americans, with a minimum of government regulation.

(5)Increasingly Americans are relying on interactive media for a variety of political, educational, cultural, and entertainment services.

(b)Policy

It is the policy of the United States—

(1)to promote the continued development of the Internet and other interactive computer services and other interactive media;

(2)to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation;

(3)to encourage the development of technologies which maximize user control over what information is received by individuals, families, and schools who use the Internet and other interactive computer services;

(4)to remove disincentives for the development and utilization of blocking and filtering technologies that empower parents to restrict

their children's access to objectionable or inappropriate online material; and

(5)to ensure vigorous enforcement of Federal criminal laws to deter and punish trafficking in obscenity, stalking, and harassment by means of computer.

(c)Protection for "Good Samaritan" blocking and screening of offensive material

(1)Treatment of publisher or speaker

No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.

(2)Civil liability

No provider or user of an interactive computer service shall be held liable on account of—

(A)any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected; or

(B)any action taken to enable or make available to information content providers or others the technical means to restrict access to material described in paragraph (1).[1]

(d)Obligations of interactive computer service

A provider of interactive computer service shall, at the time of entering an agreement with a customer for the provision of interactive computer service and in a manner deemed appropriate by the provider, notify such customer that parental control protections (such as computer hardware, software, or filtering services) are commercially available that may assist the customer in limiting access to material that is

harmful to minors. Such notice shall identify, or provide the customer with access to information identifying, current providers of such protections.

(e)Effect on other laws

(1)No effect on criminal law

Nothing in this section shall be construed to impair the enforcement of section 223 or 231 of this title, chapter 71 (relating to obscenity) or 110 (relating to sexual exploitation of children) of title 18, or any other Federal criminal statute.

(2)No effect on intellectual property law

Nothing in this section shall be construed to limit or expand any law pertaining to intellectual property.

(3)State law

Nothing in this section shall be construed to prevent any State from enforcing any State law that is consistent with this section. No cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section.

(4)No effect on communications privacy law

Nothing in this section shall be construed to limit the application of the Electronic Communications Privacy Act of 1986 or any of the amendments made by such Act, or any similar State law.

(5)No effect on sex trafficking law

Nothing in this section (other than subsection (c)(2)(A)) shall be construed to impair or limit—

(A)any claim in a civil action brought under section 1595 of title 18, if the conduct underlying the claim constitutes a violation of section 1591 of that title;

(B)any charge in a criminal prosecution brought under State law if the conduct underlying the charge would constitute a violation of section 1591 of title 18; or

(C)any charge in a criminal prosecution brought under State law if the conduct underlying the charge would constitute a violation of section 2421A of title 18, and promotion or facilitation of prostitution is illegal in the jurisdiction where the defendant's promotion or facilitation of prostitution was targeted.

(f)Definitions

As used in this section:

(1)Internet

The term "Internet" means the international computer network of both Federal and non-Federal interoperable packet switched data networks.

(2)Interactive computer service

The term "interactive computer service" means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.

(3)Information content provider

The term "information content provider" means any person or entity that is responsible, in whole or in part, for the creation or development

of information provided through the Internet or any other interactive computer service.

(4)Access software provider

The term “access software provider” means a provider of software (including client or server software), or enabling tools that do any one or more of the following:

(A)filter, screen, allow, or disallow content;

(B)pick, choose, analyze, or digest content; or

(C)transmit, receive, display, forward, cache, search, subset, organize, reorganize, or translate content.

		Nancy) (Entered: 11/05/2020)
12/07/2020	8	Assented to MOTION to Amend *Complaint and First Amended Complaint* by Alan Borowski. (Attachments: # 1 First Amended Complaint and Jury Demand)(Perroni, Peter) (Entered: 12/07/2020)
12/08/2020	9	Judge Mark G. Mastroianni: ELECTRONIC ORDER entered granting 7 Assented to MOTION for Extension of Time to December 7, 2020 to File Answer or Response to Plaintiffs Complaint. ALLOWED. (Lindsay, Maurice) (Entered: 12/08/2020)
12/08/2020	10	Judge Mark G. Mastroianni: ELECTRONIC ORDER entered granting 8 Assented to MOTION to Amend Complaint and First Amended Complaint. ALLOWED. (Lindsay, Maurice) (Entered: 12/08/2020)
12/17/2020	11	AMENDED COMPLAINT *(First Amended)* against All Defendants, filed by Alan Borowski.(Perroni, Peter) (Entered: 12/17/2020)
12/24/2020	12	Assented to MOTION for Extension of Time to January 15, 2021 to File Answer *or Response to Plaintiff's Amended Complaint* by John Cartledge, City of Northampton, Dorothy Clayton, Jody Kasper. (Pelletier, Nancy) (Entered: 12/24/2020)
12/28/2020	13	Judge Mark G. Mastroianni: ELECTRONIC ORDER entered granting 12 Assented to MOTION for Extension of Time to January 15, 2021 to File Answer or Response to Plaintiff's Amended Complaint. ALLOWED. Defendant's answer due 1/15/2021. (Lindsay, Maurice) (Entered: 12/28/2020)
01/15/2021	14	MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM by John Cartledge, City of Northampton, Dorothy Clayton, Jody Kasper.(Pelletier, Nancy) (Entered: 01/15/2021)
01/15/2021	15	MEMORANDUM in Support re 14 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by John Cartledge, City of Northampton, Dorothy Clayton, Jody Kasper. (Pelletier, Nancy) (Entered: 01/15/2021)
01/20/2021	16	MOTION for Extension of Time to February 12, 2021 to File Response/Reply as to 14 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM by Alan Borowski.(Perroni, Peter) (Entered: 01/20/2021)
01/21/2021	17	Judge Mark G. Mastroianni: ORDER entered granting 16 Motion for Extension of Time to File Response/Reply re 14 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM Responses due by 2/12/2021 (Zamorski, Michael) (Entered: 01/21/2021)
02/11/2021	18	Opposition re 14 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by Alan Borowski. (Perroni, Peter) (Entered: 02/11/2021)
07/30/2021	19	Judge Mark G. Mastroianni: ELECTRONIC ORDER entered granting in part and denying in part 14 Motion to Dismiss. Specifically, the court grants the motion to the extent it seeks dismissal of the claim under 42 U.S.C. § 1985, which Plaintiff does not oppose. (See Dkt. No. 18 at 8 n.5.) However, Defendant's motion to dismiss is otherwise denied. As to the 42 U.S.C. § 1983 substantive due process claim, the court concludes Plaintiff's amended complaint, which must be accepted as true and viewed in the light most favorable to Plaintiff (including drawing all reasonable inferences in his favor) at this stage, adequately alleges conscience-shocking behavior. In particular, Plaintiff alleges Defendants secretly conspired to concoct false allegations against him, actively concealed material exculpatory information, and compromised the investigation by assigning Defendant Fappiano (whom the other defendants believed wrote the false anonymous letters which triggered the investigations) to be the liaison to the Attorney General's Office. Plaintiff additionally alleges Defendants prevented the letters from being scientifically tested, improperly removed Plaintiff as head of the Detective Bureau, and falsely disparaged Plaintiff to the media on multiple occasions, all in an effort to threaten, intimidate, and coerce Plaintiff to quit his protected employment in retaliation for Plaintiff's involvement in the forced resignation of a separate employee for misconduct. As was true in Bliss v. Sanguinet, 2013 WL 3334728, at *5 (D. Mass. June 24, 2013), "i]f such allegations are adequately substantiated by evidence, a reasonable factfinder might conclude that defendant's conduct was so offensive and egregious as to shock the conscience." See id. (explaining that "Bliss's allegations -- that town officials unlawfully targeted him for personal and political reasons by, among other things, bringing unfounded charges of misconduct, conspiring with Bindas to concoct false allegations against him, and knowingly terminating him without just cause paint a highly troubling picture of an abuse of official power."). Plaintiff's allegations, in the court's view, implicate the type of

		"malicious and sadistic abuses of power by government officials, intended to oppress or to cause injury and designed for no legitimate government purpose," which "unquestionably shock the conscience." Velez v. Levy, 401 F.3d 75, 94 (2d Cir. 2005) (internal quotation marks omitted); see also Marrero-Rodriguez v. Municipality of San Juan, 677 F.3d 497, 501-02 (1st Cir. 2012) ("[C]onduct intended to injure in some way unjustifiable by any government interest... is most likely to support a substantive due process claim." (internal quotation marks omitted)). The court also concludes that qualified immunity, at least at this stage of the proceedings, does not bar this claim against the individual defendants, as a reasonable defendant should have known his or her conduct (as alleged in the complaint) was unlawful. See Higgins v. Town of Concord, 246 F. Supp. 3d 502, 516-18 (D. Mass. 2017); Brothers v. Town of Millbury, 2014 WL 4102436, at *4 (D. Mass. Aug. 14, 2014); see also Giragosian v. Bettencourt, 614 F.3d 25, 29 (1st Cir. 2010) ("Because it is not always possible to determine before any discovery has occurred whether a defendant is entitled to qualified immunity, courts often evaluate qualified immunity defenses at the summary judgment stage."). In addition, Plaintiff has adequately asserted a basis for municipal liability by alleging that the "constitutional injury was caused by... a person with final policymaking authority," namely, Defendant Kasper, the Chief of the Northampton Police department. Rodriguez-Garcia v. Miranda-Marin, 610 F.3d 756, 769 (1st Cir. 2010). The court also concludes that Plaintiff's Massachusetts Civil Rights Act claim survives dismissal. The amended complaint's allegations and reasonable inferences drawn therefrom plausibly suggest that Defendants "engaged in a pattern of harassment and intimidation in an attempt" to coerce Plaintiff to quit his job and thus give up his constitutionally protected property interest in continued employment. Howcroft v. City of Peabody, 747 N.E.2d 729, 746 (Mass. App. Ct. 2001). (Lindsay, Maurice) (Entered: 07/30/2021)
09/15/2021	20	ANSWER to 11 Amended Complaint by John Cartledge, City of Northampton, Dorothy Clayton, Jody Kasper.(Lawless, David) (Entered: 09/15/2021)

PACER Service Center			
Transaction Receipt			
10/11/2021 14:07:09			
PACER Login:	Bigrivers42	**Client Code:**	
Description:	Docket Report	**Search Criteria:**	3:20-cv-30165-MGM
Billable Pages:	4	**Cost:**	0.40

WHISTLEBLOWER AID

United States Senate Committee on Commerce, Science and Transportation

Sub-Committee on Consumer Protection, Product Safety, and Data Security

Statement of Frances Haugen
October 4, 2021

Chairman Blumenthal, Ranking Member Blackburn, and Members of the Subcommittee. Thank you for the opportunity to appear before you and for your interest in confronting one of the most urgent threats to the American people, to our children and our country's well-being, as well as to people and nations across the globe.

My name is Frances Haugen. I used to work at Facebook and joined because I think Facebook has the potential to bring out the best in us. But I am here today because I believe that Facebook's products harm children, stoke division, weaken our democracy and much more. The company's leadership knows ways to make Facebook and Instagram safer and won't make the necessary changes because they have put their immense profits before people. Congressional action is needed. They cannot solve this crisis without your help.

I believe that social media has the potential to enrich our lives and our society. We can have social media we enjoy — one that brings out the best in humanity. The Internet has enabled people around the world to receive and share information and ideas in ways never conceived of before. And while the Internet has the power to connect an increasingly globalized society, without careful and responsible development, the Internet can harm as much as it helps.

I have worked as a product manager at large tech companies since 2006, including Google, Pinterest, Yelp and Facebook. My job has largely focused on algorithmic products like Google+ Search and recommendation systems like the one that powers the Facebook News Feed. Working at four major tech companies that operate different types of social networks, I have been able to compare and contrast how each company approaches and deals with different challenges. The choices being made by Facebook's leadership are a huge problem — for children, for public safety, for democracy — that is why I came forward. And let's be clear: it doesn't have to be this way. We are here today because of deliberate choices Facebook has made.

I joined Facebook in 2019 because someone close to me was radicalized online. I felt compelled to take an active role in creating a better, less toxic Facebook. During my time at Facebook, first working as the lead product manager for Civic Misinformation and later on Counter-Espionage, I saw that Facebook repeatedly encountered conflicts between its own profits and our safety. *Facebook consistently resolved those conflicts in favor of its own profits.* The result has been a system that amplifies division, extremism, and polarization — and undermining societies around the world. In some cases, this dangerous online talk has led to actual violence that harms and even kills people. In other cases, their profit optimizing machine is generating self-harm and self-hate — especially for vulnerable groups, like teenage girls. These problems have been confirmed repeatedly by Facebook's own internal research.

This is not simply a matter of some social media users being angry or unstable. Facebook became a $1 trillion company by *paying for its profits with our safety, including the safety of our children.* And that is unacceptable.

I believe what I did was right and necessary for the common good — but I know Facebook has infinite resources, which it could use to destroy me. I came forward because I recognized a frightening truth: almost no one outside of Facebook knows what happens inside Facebook. The company's leadership keeps vital information from the public, the U.S. government, its shareholders, and governments around the world. The documents I have provided prove that Facebook has repeatedly misled us about what its own research reveals about the safety of children, its role in spreading hateful and polarizing messages, and so much more. I appreciate the seriousness with which Members of Congress and the Securities and Exchange Commission are approaching these issues.

The severity of this crisis demands that we break out of previous regulatory frames. Tweaks to outdated privacy protections or changes to Section 230 will not be sufficient. The core of the issue is that no one can understand Facebook's destructive choices better than Facebook, because only Facebook gets to look under the hood. A critical starting point for effective regulation is transparency: full access to data for research not directed by Facebook. On this foundation, we can build sensible rules and standards to address consumer harms, illegal content, data protection, anticompetitive practices, algorithmic systems and more.

As long as Facebook is operating in the dark, it is accountable to no one. And it will continue to make choices that go against the common good. *Our common good*.

When we realized tobacco companies were hiding the harms it caused, the government took action. When we figured out cars were safer with seat belts, the government took action. And today, the government is taking action against companies that hid evidence on opioids.

I implore you to do the same here.

Right now, Facebook chooses what information billions of people see, shaping their perception of reality. Even those who don't use Facebook are impacted by the radicalization of people who do. A company with control over our deepest thoughts, feelings and behaviors needs real oversight.

But Facebook's closed design means it has no oversight — even from its own Oversight Board, which is as blind as the public. Only Facebook knows how it personalizes your feed for you. It hides behind walls that keep the eyes of researchers and regulators from understanding the true dynamics of the system. When the tobacco companies claimed that filtered cigarettes were safer for consumers, it was possible for scientists to independently invalidate that marketing message and confirm that in fact they posed a greater threat to human health.[1] But today we can't make this kind of independent assessment of Facebook. We have to just trust what Facebook says is true — and they have repeatedly proved that they do not deserve our blind faith.

This inability to see into the actual systems of Facebook and confirm that Facebook's systems work like they say is like the Department of Transportation regulating cars by watching them drive down the highway. Imagine if no regulator could ride in a car, pump up its wheels, crash test a car, or **even know that seat belts *could* exist**. Facebook's regulators can see some of the problems — but they are kept blind to what is causing them and thus can't craft specific solutions. They cannot even access the company's own data on product safety, much less conduct an independent audit. How is the public supposed to assess if Facebook is resolving conflicts of interest in a way that is aligned with the public good if it has no visibility and no context into how Facebook really operates?

This must change.

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[1] James Hamblin. "If My Friend Smokes Sometimes, Should the Cigarettes Have Filters? An honest question." The Atlantic. https://www.theatlantic.com/health/archive/2017/07/cigarette-filters/533379/

Facebook wants you to believe that the problems we're talking about are unsolvable. They want you to believe in false choices. They want you to believe you must choose between connecting with those you love online and your personal privacy. That in order to share fun photos of your kids with old friends, you must also be inundated with misinformation. They want you to believe that this is just part of the deal. *I am here to tell you today that's not true. These problems are solvable. A safer, more enjoyable social media is possible.* But if there is one thing that I hope everyone takes away from these disclosures it is that Facebook chooses profit over safety every day — and without action, this will continue.

Congress can change the rules Facebook plays by and stop the harm it is causing.

I came forward, at great personal risk, because I believe we still have time to act. But we must act now.

Thank you.

United States Court of Appeals
For the First Circuit

No. 21-1582

RIAN G. WATERS,

Plaintiff - Appellant,

v.

FACEBOOK, INC.; GOOGLE LLC; AIDAN KEARNEY,

Defendants - Appellees,

JEREMY HALEY; MARTHA SMITH-BLACKMORE; WILLIAM HIGGINS; JIM DALTON; MAURA TRACY HEALEY; JOHN DOES (1-10),

Defendants.

Affidavit of Rian Waters

Based on the whistle blower's testimony to congress, and media reports of the leaked documents, I believe the following facts add weight to the issue of whether Facebook should be considered as acting under the color of the law;

1. Multiple congressmen noted on October 5th, 2021, that Big Tech lobbyists are the biggest obstacle to section 230 reform.
2. Facebook knowingly facilitated the interference of our politics and discourse by recklessly allowing thousands of foreign agents in Iran, Russia, China, and beyond to exploit their chattels.

3. FB has 100% control of their algorithms, and they are aware that the current settings for their algorithms are forcing politicians to take positions, that they know their own constituents don't like or approve of because those are the ones that Facebook's algorithms distribute.
4. FB has significant influence over what politicians get elected by allowing some politicians to break their rules with impunity, while forcing others to comply. FB knows that content that violates their rules spreads the fastest.

The following factual allegations could be added for conspiracy.

5. After Kearney talked to FB employees Phil Perry and Nick Marquez, Facebook put Kearney on a list (either cross-check or whitelist) that allowed Kearney to post more offensive content then normal people without ramifications.
6. FB decided to change their algorithm to maximize the distribution of extreme and violent content right after this lawsuit was filed, and while Kearney was harassing me and my witnesses.
7. FB is aware that the changes they made to their algorithms in 2018 are encouraging, and in some cases forcing publishers to publish divisive and hateful content by dramatically favoring it.

8. By virtue of, the massive number of Kearney's followers, and social media's role in social and occupational opportunities, the Defendants acting in unison held a peculiar power of coercion over the Plaintiff that they would not have had if they had acted independently.
9. FB employees found that FB was removing less than 1% of violent content, and they found that optimizing for growth made their product less enjoyable. FB employees found better designs, but FB executives shelved the designs.
10. The individual Defendants, by design and/or an agreement, intimidated me and my witnesses.
11. The individual Defendants committed acts in furtherance of wrongful design or agreement to punish me without due process.
12. Exhibit G of the SAC is a screen shot of Aidan Kearney using a secret group on Facebook, "The Big 8" to say he didn't care if his blog led to the death of me or my witnesses because our participation in court hearings caused him "psychological effects."

I, Rian Waters, state under the pains and penalties of perjury that all the above stated facts and or allegations are true to the best of my knowledge.

/s/ Rian Waters 10/13/2021

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