

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

RIAN WATERS, Plaintiff)	
)	
)	
FACEBOOK INC., et al., Defendants)	3:2020CV30168 - MGM
)	
)	

**MEMORANDUM IN SUPPORT OF PLAINTIFF RIAN WATERS's 60(b)(3) &
60(b)(6) MOTION TO REMOVE JUDGMENT AND REOPEN CASE**

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Factual Background

I, Rian Waters, filed a verified complaint in this action on October 26th, 2020, (Docket 1) against ten named Defendants and ten John Does. In the complaint that was served on Defendants Google and Facebook¹ I stated under penalties of perjury that I was “diagnosed with Adjustment Disorder” and that “Aidan Kearney's articles [had] been identified as the cause and stressor of the disorder.” (VC 88) I explained that because of the harassment in the state case (1879CV00344) it “became too dangerous for me to present evidence or name witnesses... and I lost the ability to make strong written and oral arguments.” (VC 92) The complaint described examples of how Aidan Kearney and his followers intimidated my witnesses. (VC 46-48,54) On October 29th 2020, Aidan Kearney attacked the credibility of potential witnesses Michelle Ollson, Amanda Sawyer, and Michael Gaffney using YouTube [Google,] 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. (Docket 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. 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)

¹ Here on collectively referred to as (“Tech Defendants”)

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. 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, 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. 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, that I should not be allowed to “relitigate old matters, or to raise arguments.” I filed an appeal, and in this brief, I am presenting the arguments that could have been given had the court given me notice of its intentions and perceived deficiencies.

60(B)(3)

Legal Standard:

“As a general matter, Rule 60(b) motions should not be granted unless the party seeking relief can show (1) that the motion was timely, (2) that exceptional circumstances justifying relief exist, (3) that the other party would not be unfairly prejudiced, and (4) that there is a potentially meritorious claim or defense.” Roosevelt Reo PR II Corp. v. Del Llano-

Jiménez, No. 17-1768, at *6 (1st Cir. Apr. 9, 2019) “Rule 60(b)(6) provides federal district courts with a residual reservoir of equitable power to grant discretionary relief from a final judgment for “any other reason justifying relief.” Paul Revere Variable Annuity Insurance v. Zang, 248 F.3d 1, 5 (1st Cir. 2001)

Misconduct

Aidan Kearney intentionally distributed content to punish and discredit my first witnesses, which prevented me from presenting all my evidence, arguing my best case, or receiving representation. 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.” (Docket 69-1 at 6) 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 this rule. 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) Clearly 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 motion is timely and the Defendants will not be prejudiced

Both 60(B)(3) and 60(B)(6) need to be filed within a reasonable amount of time. I wrote and filed this motion as fast as I could, (Aff. 4) which was slow because I have not been at my best state of cognitive ability. The Defendants are the cause of my impairment, and they are the reason I don't have a lawyer, so in fairness I should be allowed as much time as I require to do a similar quality of work that I would have quickly done without impairment, or if I had the benefit of representation. Additionally, on August 3rd, 2021, I informed the Defendants via email that I intended to file a rule 60b motion, (Aff. 5) and the Defendants have not had to start working on their Appellee briefs yet, so the Defendants will not be prejudiced in any way.

Extraordinary Circumstances

“In determining whether extraordinary circumstances are present, a court may consider a wide range of factors. These may include, in an appropriate case, the risk of injustice to the parties and the risk of undermining the public's confidence in the judicial process." Buck v. Davis, 137 S. Ct. 759, 777-78 (2017) It would plainly be an injustice if this court did not allow me to be heard after the court effectively suppressed my witnesses and dismissed the complaint without giving me notice of the perceived deficiencies, (like

this court has consistently done in the past,²) the court has to allow me to raise arguments at some point because the constitution is the supreme law, a law this court swore to protect. See *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) “The district court dismissed Brown's complaint sua sponte, with prejudice and without notice and an opportunity to respond. When a party like Brown proceeds in forma pauperis, the district court has the power on its own motion to dismiss the case for failure to state a claim. 28 U.S.C. § 1915(e) (2)(b)(ii). But this power is cabined by the requirements of basic fairness: a district court may only dismiss a case

² 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) see also *Bank Nat'l Tr. Co. v. Pike*, 916 F.3d 60, 67 (1st Cir. 2019)

sua sponte after giving the plaintiff notice of the perceived inadequacy of the complaint and an opportunity for the plaintiff to respond.” Biron v. Upton, No. 15-10684, at *6 (5th Cir. June 18, 2018) see also 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) Even in circuits where sua sponte dismissals without notice and with prejudice have been upheld, the appellate courts stated that the decision comported to due process because the court allowed the plaintiff to raise arguments in the rule 59(e) and or rule 60(b) motions. See Curley v. Perry, 246 F.3d 1278, 1284 (10th Cir. 2001)

The court should have explained why it treated this case differently than prior cases and dismissed the state claims with prejudice. “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 Supreme court “rejected court-made pleading rules for pro se litigants, explaining that ‘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)

The Court Used The Wrong Pleading Standard

The court stated that it “accepts as true all *well-plead* allegations” (docket 89 decision at 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) “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) 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

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. I stated that looking at the facts stressed my adjustment disorder, (SAC 84 161) 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)

Diversity Jurisdiction

The court only pointed to the diversity statute “in a perfunctory manner, unaccompanied by some effort at developed argumentation” which if the argument was raised by a party in the same manner I would not have to respond. Feliciano-Hernández v. Pereira-Castillo, 663 F.3d 527, 537 n.5 (1st Cir. 2011) It is hard to guess what the courts rationale is as the SAC meets all the elements of the statute. (SAC 4,7,9,11) The only State law claims in the SAC are directed exclusively at defendants from California for product liability and gross negligence, so if the Federal claims were dismissed then the only issues remaining are claims against parties in different states. “[O]nly the bad claims are dismissed; the complaint as a whole is not” Jones v. Bock, 549 U.S. 199, 221 (2007) Even if the other Massachusetts parties in the dismissed federal claims are still considered part of the lawsuit, it is not clear how the court believes Aidan Kearney and Katherine Peter are responsible for Facebook’s and Google’s product designs and training practices. “Absent collusion, there is diversity jurisdiction when the real collision of issues... or as stated in Helm v. Zarecor, 222 U.S. 32, 36, ‘the actual controversy,’ is between citizens of different States. This is a practical not a mechanical determination and is resolved by the pleadings and the nature of the dispute.” Smith v. Sperling, 354 U.S. 91, 97 (1957).

Aidan Kearney’s Conspiracy Plausibility

Aidan Kearney has admitted several times that he uses his “weaponized” social media accounts to deter lawsuits. (SAC 75,78,79) “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) My first injunction motion showed an undisputed example of Aidan Kearney conspiring to use his platform to obstruct a court case using Facebook. (Docket #6 affidavit P8, Exhibit C) 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.” (Aff 2) 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 (Docket #71.2 P 2-5) and has routinely directed his cult following to harass lawyers that take case against him. (Id. 6-13, 16, 23) “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) 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) (quotations omitted)

In Mr. Stevenson’s speech on the House floor, he described an editor of a newspaper named Daniel Dennet. Daniel who used the same 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) see also the law in the next three sections.

Google & Facebook liability

“We 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) "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) "[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)

Continued distribution/ Secondary publishers

Google and Facebook were legally made aware that Aidan Kearney had impaired my ability to argue (VC 88, 92) and that Kearney harassed me and my witnesses using their

platforms (VC 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.” (SAC 162) see also (SAC 89-92 & Docket#6 (which was served with the complaint) “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.” (SAC 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) “[Defendants] have quite likely been victimized by a series of blunders on their lawyer's part (for which they may have a claim against [them]) in our adversary system, the acts and omissions of counsel are customarily visited upon the client in a civil case” Cotto v. U.S., 993 F.2d 274, 281 (1st Cir. 1993) 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)

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 (SAC 31, 53-55, 65, **81**, 82, 89-93) and gives substantial assistance SAC 56 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" [SAC 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. [see SAC 38] 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)

Failure-to-train/ gross negligence as Quasi State actors

When companies intentionally turn a blind eye to oppression being done with their products by state actors they should be held to the standards of municipalities as quasi state actors. “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.” (SAC 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” (SAC 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)

State Action

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.” (SAC 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.

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.” (SAC 25) see also (SAC 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” (SAC 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 Mulqueen³ and John Payne, should hold some weight for state action too, as the amount of threats dramatically increased after the state gave approval of the public shaming.⁴ “[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) 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...* [see (SAC 1)] What, then, can be done? The States cannot or do not act. Some other power must be invoked.”
Supra Globe 459 Coburn

³ The same Jane Mulqueen this court promoted in 2011 to head the SVU for the Hampden county DA’s office.

⁴ Notably the State case 1879CV0344 was remanded for further proceedings.

Overt and covert encouragement

“[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.” SAC 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.” (SAC 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...” (SAC 1) “Aidan Kearney routinely harasses victims of police corruption on his ‘weaponized’ social media account’s and portrays the victims as culprits.” SAC 18 “Aidan Kearney has bragged about getting police officers to bring criminal charges against multiple citizens. Including but not limited to Lorryna Calle and Katherine Peter.” SAC

19 “Police officers have routinely refused to hold Aidan Kearney accountable for crimes...” SAC 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...” SAC 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.” (SAC 145) see also (SAC 15) 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)

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. Phipps, 435 U.S. 247, 263-64 (1978) In this case I have proof, I was diagnosed with adjustment disorder. (SAC 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

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. Aidan Kearney uses, and has trained his followers to use virtual private networks and fake names on Facebook and Google to hide their identity when harassing his targets. (SAC 77) 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. (SAC 53-59)

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*, [SAC 77, 133] [Aff. P1] 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.” (SAC 133 see also SAC Exhibit G) to “interfere with my right to be fairly heard in court with conformity to the laws.”¹³⁴ and “because of my willingness to stand for social justice.”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

“[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 *Democrat*. . . 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-wags⁵,’ 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 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 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.”⁶ Id. 296 These examples, and dozens if not hundreds of others that are detailed in the Globe show that the 42nd

⁵ 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

⁶ Radical at the time seemingly meant the same as what Kearney calls a “social justice warrior.”

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”; (SAC 1) “Aidan Kearney and Katherine Peter conspired against me because of my willingness to stand for social justice. (SAC 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. (SAC 153-154)

RICO, State claims

Threats of murder, 18 U.S.C. § 1512, and 18 U.S.C. § 1513, are all listed in the RICO statute 18 U.S.C. § 1961, the Taliban just proved that in 2021, social media is by far the most powerful weapon on the planet, absent clarification on the perceived deficiencies I will withhold explaining every facet of the RICO and State law claims to conserve space.

Conclusion

This court should remove the judgment and reopen the case, as its current partisan judgment was made without notice or prior opportunity to respond, has no merit and seemingly does not serve any purpose except to help the Defendants spoil evidence and intimidate my witnesses.

Respectfully submitted by:

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