Your name: Rian Waters

Address: 9 Canal st. Ware MA 01028 (proxy address)

Phone Number: (530) 739-8951

Fax Number:

E-mail Address: WatersRian@gmail.com

Pro Se Plaintiff

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Oakland

Rian Waters Plaintiff vs. Meta Platforms INC Aidan Kearney Worcester Digital Marketing LLC. Defendants	Case Number: 4:23-cv-00643-YGR Motion for an Ex Parte TRO, and a Preliminary Injunction with Consolidation of trial on the merits Judge Yvonne Gonzalez Rogers Fed. R. Civ. Proc. 65

Hearing date: Tuesday May 2nd, 2023

Table of Contents

Statutes

Other Authorities

Rules

Constitutional Provisions

Supreme Court Cases

Other Cases

Ninth Circuit cases

I. NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on Tuesday May 2nd 2023 at 2pm in Oakland Federal District Courthouse, 1301 Clay Street, Courtroom 1, Fourth Floor., Pro Se Plaintiff Rian Waters shall and hereby does move for an order granting Plaintiff's Motion for an Ex Parte TRO, and a Preliminary Injunction with Consolidation of trial on the merits.

Additionally, I move for an order granting partial summary judgment for liability as appropriate, and for the court to grant a permanent injunction. The motion is based on, the Memorandum of Points and Authorities, and the First Amended Verified Complaint, Affidavit of Rian Waters, and such other written or oral argument as may be presented at or before the time this motion is taken under submission by the Court.

II. STATEMENT OF REQUESTED RELIEF

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

Pursuant to Federal Rule of Civil Procedure 65 Plaintiff Rian Waters requests that after hearing, this court issue a preliminary or permanent injunction after hearing requiring Kearney to remove, and refrain from making any blog, post, or video, that shames, threatens, discusses, or otherwise harasses any persons involved in this case including, court officials, natural parties, lawyers, or witnesses, on Facebook or any

website or social-media page directly associated with Turtleboy, including but not limited to TBDailynews.com, and Clarence Woods Emerson.

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

Pursuant to Federal Rule of Civil Procedure 65(a)(2), and Federal Rule of Civil Procedure 56, I move for this court to grant partial summary judgment where appropriate, and for the court to advance the trial on the merits for remaining issues and consolidate the trial with the hearing to issue a permanent injunction.

I request that the court reschedule the hearing for as soon as legally possible, which may be 10 or 21 days after Defendants are served.

III. STATEMENT OF ISSUES TO BE DECIDED

1. Whether I am likely to succeed on the merits
    a. Whether conspiring to frame an opposing party for threatening to rape and murder children is a 42 U.S.C. § 1985(2)(i) conspiracy.
    b. Whether sending heinous threats to a witness, knowing that it would trigger a parties adjustment disorder is a § 1985 conspiracy.
    c. Whether Meta's past conversations with Kearney about paying for a guarantee that his profiles wouldn't be unpublished, and Meta's decision to allow Kearney special privileges to break their rules, and Meta's opposition to an investigation into Kearney's obstruction, and the timing of Meta's decision to delete my Facebook account infer agreement or complicity in a conspiracy with Kearney.
    d. Whether Section 230 immunizes Meta from § 1986 liability of having legal knowledge that a codefendant was engaged in a § 1985 conspiracy, and having the power to prevent or aid in preventing the commission of the same, and neglecting and refusing to do so.

e. Whether the plethora of state-action is more than enough to find that the Defendants were acting under the color of the law for § 1983

f. Whether weaponized public shaming by state backed actors is a violation of due process.

2. Whether consistent harassment before court hearings, and numerous heinous threats to witnesses, and a promise to not stop harassing until my witness is destitute justifies a finding that I am likely to suffer irreparable harm in the absence of relief preventing further harassment.
3. Whether balance of equities tip in my favor.
4. Whether the injunction and consolidation is in the public interest.
5. Whether advancing summary judgment or trial is appropriate to stop past conspiracies from causing due process issues in this court.

IV. MEMORANDUM OF POINTS AND AUTHORITIES

Advancing summary judgment or trial is necessary to repair the status quo.

"The [amended] rule allows a party to move for summary judgment at any time, even as early as the commencement of the action." Fed. R. Civ. P. 56 Committee notes on rules-2009 amendment. ("If a motion for summary judgment is filed before a responsive pleading is due from a party affected by the motion, the time for responding to the motion is 21 days after the responsive pleading is due.")

As a result of the Defendants' conspiracies, I am in extreme poverty which critically hinders my ability to fight the case effectively, and puts me in too desperate of a state to fairly negotiate settlement. Unchecked instances of witness intimidation prevents me from having a fair opportunity to retain legal representation, or depose and talk to witnesses. Once it is established that Aidan Kearney is liable for Counts I & II, Kearney will no longer have any leverage or incentive to obstruct the court case, which I believe will be more effective at providing witnesses' safety then any injunction could.

This court must provide due process by repairing the status quo. The relief requested is the path of least resistance to expediently and justly heal those wounds and prevent the fruits of civil rights conspiracies from causing due process issues in this court. It would also be a violation of my due process rights to approve of obvious threats that are causing violations to my constitutional rights without informing me of meritorious reasoning, as Massachusetts courts have consistently done.

Additionally, the claims that I seek summary judgment/consolidation on do not require discovery, and Facebook's only defense worthy of debate is Section 230, which is a matter of law that will probably be appealed to the Supreme Court regardless of which party prevails.

Serving Kearney with the injunction at the same time as the complaint will conserve judicial resources because Kearney will default in this action, just as he has done in every action addressing the Count 1 and Count 2 conspiracies, because Kearney is undeniably guilty. Affidavit at 2. See also Rian Waters Vs. Aidan Kearney, SJC-13373[1] (consolidated appeal of the State's unintelligible refusal to issue a criminal complaint over obvious undenied crimes.) "The Court generally may take judicial notice of court filings and other matters of public record." Rubalcava v. City of San Jose, 20-cv-04191-BLF, (N.D. Cal. Jul. 15, 2021) citing Reyn's Pasta Bella, LLC v. Visa USA, Inc., 442 F.3d 741, 746 n.6 (9th Cir. 2006)

TRO/ Preliminary Injunction Standard

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

"A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary

[1] The docket with my Appellant brief can be found on the state's website. https://www.ma-appellatecourts.org/docket/SJC-13373

relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." American Trucking v. City of Los Angeles, 559 F.3d 1046, 1052 (9th Cir. 2009)

Although, TROs, "should be restricted to serving their underlying purpose of preserving the status quo and preventing irreparable harm just so long as is necessary to hold a hearing, and no longer." Reno Air Racing Ass'n., Inc. v. McCord, 452 F.3d 1126, 1131 (9th Cir. 2006) ("In cases where notice could have been given to the adverse party, courts have recognized a very narrow band of cases in which ex parte orders are proper because notice to the defendant would render fruitless the further prosecution of the action.")

Absent relief I will suffer irreparable harm

There is good cause to believe that immediate and irreparable damage to the Court's ability to grant effective final relief will take place without relief. Under the current circumstances abstention would run afoul with the due process clause of the 14th Amendment, as Kearney has a pattern of stressing my adjustment disorder before court hearings, Affidavit at 5 (FAVC ¶ 59-63 ¶ 36 ¶ 50,) and Kearney has made it abundantly clear that I cannot safely have witnesses absent relief, and that he will keep attacking my witnesses until a court intervenes. "I will not stop until you beg for mercy, and then I'm going to do it twice as much, you're gonna feel the way I felt when I was in my garage when I wanted to kill myself." FAVC ¶ 63 see also (FAVC ¶ 31, ¶ 58, ¶ 59, ¶ 60 ¶ 67, ¶ 68) Notably Kearney has been notified.

The last time Kearney and I held a deposition Kearney harassed me before, after, and during the deposition. (Affidavit at 3) Kearney's outbursts while I was asking questions caused the deponent to cry and ask to stop the deposition. (Affidavit at 4) If I can't have a fair deposition without harassment, then no one should get an opportunity to depose witnesses before trial.

Without relief preoccupation with Kearney's harassment would/will prevent me from being able to effectively prosecute Meta's claims.

"The right to meaningful opportunity to be heard within limits of practicality must be protected against denial by particular laws that operate to jeopardize it for particular individuals." Boddie v. Connecticut, 401 U.S. 371, 91 S. Ct. 780, 28 L. Ed. 2d 113 (1971) ("Due process requires, at minimum, that absent countervailing state interest of overriding significance, persons forced to settle their claims of right and duty through the judicial process must be given meaningful opportunity to be heard." i.d.) "[P]ast wrongs are evidence bearing on whether there is real and immediate threat of repeated injury." Blum v. Yaretsky, 457 U.S. 991, 1001 (1982) citation omitted "[A]n eventual trial that reflects witness intimidation or jury tampering is as bad as not trial at all." United States v. Acevedo-Ramos, 755 F.2d 203, 206 (1st Cir. 1985)

"[T]he constitutional violation alone, coupled with the damages incurred, can suffice to show irreparable harm." American Trucking v. City of Los Angeles, 559 F.3d 1046, 1058 (9th Cir. 2009) ("constitutional violations cannot be adequately remedied through damages") id., at 1059

Summary Judgment Legal standard

"Summary judgment is proper when the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." In re Barboza, 545 F.3d 702, 707 (9th Cir. 2008) ("An issue is genuine only if there is a sufficient evidentiary basis on which a reasonable fact finder could find for the nonmoving party, and a dispute is material only if it could affect the outcome of the suit under the governing law… The nonmoving party may not rely on denials in the pleadings but must produce specific evidence, through affidavits or admissible discovery material, to show that the dispute exists.") I.d.,

The inquiry is whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." Shaw v. Lindheim, 908 F.2d 531, 536-37 (9th Cir. 1990)

Likelihood of success on the merits

If Kearney had any exculpatory evidence I would know about it, he is undeniably guilty. (Affidavit at 2) (FAVC ¶ 86, ¶ 89-91, ¶ 95, ¶ 97) "A party may set out 2 or more statements of a claim… If a party makes alternative statements, the pleading is sufficient if any one of them is sufficient." FED. R. CIV. P. 8(d)(2)-(3) 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)

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

Meta's Knowledge

Meta Platforms INC. (here on "Facebook" or "FB") was a codefendant with Kearney in Waters v. Facebook, Inc., et al. (21-civil-01582) (First Amended Verified Complaint ¶ 20) (Here on "FAVC") "[A] corporation is a 'person'" Lacey v. Maricopa Cnty., 693 F.3d 896, 919 n.9 (9th Cir. 2012) FB was made legally aware of their codefendants' toxic background of harming opposing lawyers, plaintiffs, and witnesses, (FAVC ¶ 30-33) and that Kearney was flagrantly breaking several rules that were made for safety. FAVC ¶ 29 FB also knew the details of the November 19th, 2021, conspiracy, (FAVC ¶ 21) not through their role as a publisher but through their attorneys. "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)

FB was also legally aware that Kearney's harassment caused me to have an adjustment disorder, (FAVC ¶ 36, 121) which caused sleep disturbances and preoccupation.

Meta's power to prevent

FB could have prevented Kearney's conspiracies by not opposing investigations (FAVC ¶ 26; FAVC ¶ 149) and FB could have stopped giving Kearney special privileges to post more toxic stuff than normal people without consequences. (FAVC ¶ 16-19; FAVC ¶ 146) Facebook could have prevented significant harm to me and my witnesses if they confirmed Cristina Yakimowsky's evidence was genuine. (FAVC ¶ 166)

1985(2) Legal Standard

"Section 1985(2), in relevant part, proscribes conspiracies 'to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified.' If one or more persons engaged in such a conspiracy 'do, or *cause* to be done, any act in furtherance of the object of such conspiracy, ... the party so injured ... may have an action for the recovery of damages occasioned by such an injury ... against *any one* or more of the conspirators.'" Head v. Wilkie, 936 F.3d 1007, 1010 (9th Cir. 2019) quoting 42 U.S.C. § 1985(2) and 42 U.S.C. § 1985(3) emphasis added

Meta Kearney Conspiracy

A conspiratorial agreement between Kearney and Facebook can be inferred because Kearney discussed paying for a guarantee that his accounts would not be suspended with two Facebook employees. (FAVC ¶ 16; FAVC ¶ 146) Facebook was legally aware that Kearney was breaking several of their rules that they said were meant for safety, FAVC ¶ 29, and with that knowledge Facebook emboldened Kearney by allowing him to continue to post after his accounts were suspended. FAVC ¶ 18-19 Therefore, Facebook acted with deliberate indifference by "recognize[ing] an unreasonable risk and actually

intended to expose [the Plaintiff] to such risks without regard to the consequences." Hernandez v. City of San Jose, 897 F.3d 1125, 1135 (9th Cir. 2018)

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

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

Notably Facebook would be an accessory after the fact if they had reason to believe that I sent the threats but still deleted my account. 18 U.S. Code § 3; Penal Code § 32 FAVC ¶ 138

Meta integral participant

Facebook knew that Kearney would send heinous threats to my witnesses if they didn't confirm her evidence, (FAVC ¶ 31-33, FAVC ¶ 58, FAVC ¶ 67, FAVC ¶ 118-9) and they knew that the threats would stress my adjustment disorder causing sleep disturbances and preoccupation. (FAVC ¶ 121 it was alleged in the complaint too) When a Defendant's "individual actions do not themselves rise to the level of a constitutional violation [they] may be held liable under section 1983 only if the official is an integral participant in the unlawful act." Peck v. Montoya, 51 F.4th 877, 889 (9th Cir. 2022) quotations omitted. The Ninth Circuit permits liability under the integral-participant doctrine when "(1) the defendant knows about and acquiesces in the constitutionally defective conduct as part of a common plan with those whose conduct constitutes the violation or (2) the defendant sets in motion a series of acts by others which the defendant knows or reasonably should know would cause others to inflict the constitutional injury." Peck v. Montoya, 51 F.4th 877, 889 (9th Cir. 2022)

Facebook changed their product design making it impossible to provide details and context to reports of violations to their Terms of Service, which helped cause constitutional violations by making it impossible to address the issues before the harm takes place. FAVC ¶ 181 "[S]ection 1983 creates a species of tort liability that incorporates common-law tort principles. Courts therefore turn to the causation factors developed in the common law of torts to supply the necessary causation factor in the civil rights field. At common law, a defendant is liable for the acts of another if the defendant does a tortious act in concert with the other or pursuant to a common design with him, or, alternatively, knows that the other's conduct constitutes a breach of duty and gives substantial assistance or encouragement to the other so to conduct himself." Peck v. Montoya, 51 F.4th 877, 891 (9th Cir. 2022) citations omitted.

Facebook knew that Kearney's and WDM's public shaming and conspiracies were dependent on Facebook for reach and effect at all times relevant to the complaint. FAVC ¶ 23, ¶ 24, ¶ 27, ¶ 147

Additionally, Facebook had over 7 months to admit Yakimowsky's evidence was genuine before the June 18th threats. FAVC ¶ 150 "We apply the deliberate-indifference standard when officials had ample time to correct their obviously wrongful conduct" Peck v. Montoya, 51 F.4th 877, 893 (9th Cir. 2022)

Kearney's Conspiracies

Count 1

It can be inferred that Kearney sent the November 19th, 2021, threats, because Kearney privately sent his conspirators screenshots of the fake threats and asked his coconspirators to privately send him screenshots of the fake threats so he could use them and act like he found the threats innocently. FAVC ¶ 46 Kearney was worried the plan failed after the profile was taken down, but coconspirator Cris Gagne had already gotten screenshots. FAVC ¶ 47 According to Kearney the fake profile was up for about 15 minutes before someone reported it, and coconspirator Laura hakes correctly presumed it was me. FAVC ¶ 48 These statements are plainly admissible under the hearsay exception 801(d)(2)(E).

Kearney tried to keep his conspirators abreast by telling them that there was nothing to worry about because "I'm the one who did it." FAVC ¶ 55 "[S]tatements made to keep coconspirators abreast of an ongoing conspiracy's activities satisfy the 'in furtherance of' requirement" of 801(d)(2)(E). U.S. v. Williams, 989 F.2d 1061, 1068 (9th Cir. 1993)

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

Even assuming arguendo that Kearney has been hiding exculpatory specific facts proving that he did not send the threats, Aidan Kearney definitely conspired by presenting evidence that he knew to be fabricated and giving perjured oral testimony in attempt to

mislead the judge into thinking that I threatened to rape and murder his children. FAVC ¶ 50-53

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

Count 2

Aidan Kearney knew that I was going to try to get the Supreme Court to appeal the First Circuit's refusal to investigate the Count I conspiracy in my Petition for Writ of Certiorari, FAVC ¶ 116, ¶ 120-121, which Cristina Yakimowsky was a primary witness for. Cristina Yakimowsky had shared screenshots from her perspective because she did not like Kearney hurting people. FAVC ¶ 57 But Kearney's threats successfully scared her into not being willing to testify without a subpoena, and Kearney knew when he sent the threats that it would prevent me from presenting an effective case in the Supreme Court. FAVC ¶ 121, ¶ 140

Even assuming arguendo that Meta is cleared from liability as a conspirator, Kearney at a minimum conspired with WDM by conspiratorial design, in that he intentionally weaponized WDM, so that his followers would routinely harass whoever he targeted, and that Kearney did the conspiracy using WDM's assets knowing that as a defunct company it would be difficult for a plaintiff to hold him liable and reach the assets. FAVC ¶ 65, ¶ 66, ¶ 68 ¶ 156-57

§ 1985(2)/ § 1986 damages

These conspiracies stressed my adjustment disorder causing extreme preoccupation and prevented me from fairly addressing the merits for First Circuit case, 21-1582 and Supreme Court case U.S. 22-5133. The conspiracies violated my due process rights and caused mental anguish and community intimidation by confirming that it was too dangerous to have witnesses without protection. FAVC ¶ 151-152, ¶ 158-160, ¶ 167-168 The Defendants' acts critically stressed my adjustment disorder making me unable to

work, eat, or sleep in a reasonable fashion, which by extension I believe these actions shortened my life by at least ten years. "[T]he Supreme Court later held in Haddle that interference with a plaintiff's employment—which has no relationship to or impact on the underlying litigation for which he was subpoenaed to testify—is a cognizable injury under section 1985(2)" Head v. Wilkie, 936 F.3d 1007, 1012 (9th Cir. 2019) (FAVC 113-114)

Section 230 is useless for these claims

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

Meta Platforms INC., is empowered with federal law by Section 230, as they would not have thought they could violate constitutional rights at all, let alone on this scale without the federal provided power. (FAVC ¶ 34, 190) The Constitution does not have exceptions that says the government can only violate constitutional rights if billion-dollar companies create an undetectable back-door. "Section 1983 creates a species of tort liability that, on its face, admits of no immunities." Wyatt v. Cole, 504 U.S. 158, 163 (1992) citation omitted. "The constitution is superior to any ordinary act of the legislature, the constitution, and not such ordinary act, must govern the case to which they both apply." Marbury v. Madison, 5 U.S. 137, 178 (1803) "The Supremacy Clause provides that: 'This Constitution, and the Laws of the United States which shall be made in

Pursuance thereof… shall be the supreme Law of the Land…'" American Trucking v. City of Los Angeles, 559 F.3d 1046, 1053 (9th Cir. 2009) quoting U.S. Const. art. VI, cl. 2. "[S]tate courts have the solemn responsibility equally with the federal courts to safeguard constitutional rights." Burt v. Titlow, 571 U.S. 12, 19, 134 S. Ct. 10, 15, 187 L. Ed. 2d 348 (2013)

"A statute or a rule may be held constitutionally invalid as applied when it operates to deprive an individual of protected right although its general validity as measure enacted in the legitimate exercise of state power is beyond question." Boddie v. Connecticut, 401 U.S. 371, 91 S. Ct. 780, 28 L. Ed. 2d 113 (1971) "[E]very reasonable construction must be resorted to, in order to save a statute from unconstitutionality." Chapman v. United States, 500 U.S. 453, 464, 111 S. Ct. 1919, 1927, 114 L. Ed. 2d 524 (1991) "When new insight reveals discord between the Constitution's central protections and a received legal stricture, a claim to liberty must be addressed." Obergefell v. Hodges, 576 U.S. 644, 664, 135 S. Ct. 2584, 2598, 192 L. Ed. 2d 609 (2015)

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

1983 Constitutional Violation Due Process

"Every person has a fundamental right to liberty in the sense that the Government may not punish him unless and until it proves his guilt beyond a reasonable doubt at a criminal trial conducted in accordance with the relevant constitutional guarantees." Chapman v. United States, 500 U.S. 453, 465, 111 S. Ct. 1919, 1927, 114 L. Ed. 2d 524 (1991)

"Certainly where the State attaches a badge of infamy to the citizen, due process comes into play." Wisconsin v. Constantineau, 400 U.S. 433, 437 (1971) (quotations omitted.) The "right to be heard before being condemned to suffer grievous loss of any kind, even though it may not involve the stigma and hardships of a criminal conviction, is a principle basic to our society." Mathews v. Eldridge, 424 U.S. 319, 333 (1976)

"It may be that it is the obnoxious thing in its mildest and least repulsive form; but illegitimate and unconstitutional practices get their first footing in that way, namely, by silent approaches and slight deviations from legal modes of procedure. This can only be obviated by adhering to the rule that constitutional provisions for the security of person and property should be liberally construed. A close and literal construction deprives them of half their efficacy, and leads to gradual depreciation of the right, as if it consisted more in sound than in substance. It is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon." Coolidge v. New Hampshire, 403 U.S. 443, 454, 91 S. Ct. 2022, 2031, 29 L. Ed. 2d 564 (1971), holding modified by Horton v. California, 496 U.S. 128, 110 S. Ct. 2301, 110 L. Ed. 2d 112 (1990)

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

The Supreme court decided that a sex offender registry was not punitive because they were not doing exactly what the Defendants are doing in this case. Smith v. Doe, 538 U.S. 84, 99 (2003) ("The State's Web site does not provide the public with means to shame the offender by, say, posting comments underneath his record. An individual seeking the information must take the initial step of going to the Department of Public Safety's Web site") As the court noted the registration only comes after a conviction, while in this case, "the State has no such punitive interest. As [I] was not convicted, [I] may not be punished." Foucha v. Louisiana, 504 U.S. 71, 80 (1992) [P]rior to an adjudication of guilt in accordance with due process of law." Bell v. Wolfish, 441 U.S. 520, 535 (1979)

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

"In determining whether a provision of the Constitution applies to a new subject matter, it is of little significance that it is one with which the framers were not familiar. For in setting up an enduring framework of government they undertook to carry out for the indefinite future and in all the vicissitudes of the changing affairs of men, those fundamental purposes which the instrument itself discloses." Bell v. Maryland, 378 U.S. 226, 315 (1964)

If necessary, I am a class of one in that numerous Massachusetts courts and police unintelligibly enabled and encouraged threats and crimes against me by approving of

heinous threats without any rational basis. FAVC ¶ 171 "Our cases have recognized successful equal protection claims brought by a class of one, where the plaintiff alleges that [they have] been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment. In so doing, we have explained that the purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the State's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents." Village of Willowbrook v. Olech, 528 U.S. 562, 564 (2000) citations omitted see also, Konarski v. Rankin, No. 13-17384, 3 (9th Cir. 2015)

1983 State Action

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

Co., 419 U.S. 345, 95 S.Ct. 449, 42 L.Ed.2d 477 (1974) Emphasis added. "The satisfaction of any one test is sufficient to find state action, but at bottom, the inquiry is always whether the defendant has exercised power possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law." Pasadena Republican Club v. W. Justice Ctr., 985 F.3d 1161, 1167 (9th Cir. 2021)

Supplementary state-action

I also believe this case would satisfy the old supplementary state-action test, as "the conspiracy [is] 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) "The more thorough method of superseding State authority should only be resorted to when the deprivation of rights and the condition of outlawry was so general as to prevail in all quarters in defiance of or by permission of the local government." Cong. Globe, 42d Cong., 1st Sess., 459 (1871) Mr. Coburn. I withheld this theory from the complaint as it has not been used in years and I already argued more than enough state action, although if necessary, I'll move to amend.

Joint Action

Kearney's not making up numbers out of thin air when he says that 90% of court clerks support him. FAVC ¶ 80 Kearney gets emails all the time from court officials, particularly in Massachusetts, who sent him stories that technically violate the individuals due process rights. FAVC ¶ 72 I believe and allege that a big part of the reason why I have been getting abused by judges in Massachusetts, is because Kearney has gained leverage on a systemic scale that makes the justice system too complicit to face the elephant that is trampling the room.

Aidan Kearney's public shaming operation is dependent on police and other state actors sending him information that is not available to the public, and his access to the State's registry of motor vehicles database made these conspiracies severely effective. FAVC ¶ 70-73 "[W]hen private individuals or groups are endowed by the State with

powers or functions governmental in nature, they become agencies or instrumentalities of the State and subject to its constitutional limitations." Evans v. Newton, 382 U.S. 296, 299 (1966) "[T]he government's active involvement with the media's news gathering activities, and the mutually-derived benefits, is more than enough to make the media government actors." Berger v. Hanlon, 129 F.3d 505, 515 (9th Cir. 1997)

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

Kearney's state provided attorneys' login to instantly search criminal and family court computers shows that the State has brazenly empowered Kearney with state resources. "[T]he rationing of otherwise freely accessible recreational facilities creates a stronger case for state action than if the facilities are simply available to all comers without condition or reservation." Gilmore v. City of Montgomery, 417 U.S. 556, 574, 94 S.Ct. 2416, 2426, 41 L.Ed.2d 304 (1974)

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

Judicial coconspirators and State inaction

The unintelligible approval of Kearney's obvious and spelled out violations of the state's witness intimidation laws in four district court cases, FAVC ¶ 82-91, FAVC ¶ 98-101, and the fact that they denied an explanatory memorandum without reason, is more than enough to infer a state action conspiracy for the purposes of section 1983. "[P]rivate parties who corruptly conspire with a judge in conjunction with the judge's performance of an official judicial act are acting under color of state law for the purpose of § 1983,

even if the judge himself is immune from civil liability." Kimes v. Stone, 84 F.3d 1121, 1126 (9th Cir. 1996) see also Dennis v. Sparks, 449 U.S. 24, 29 (1980) "Evidence that police failed to exercise independent judgment will support an inference of conspiracy with a private party." Gilbrook v. City of Westminster, 177 F.3d 839, 857 (9th Cir. 1999) citation omitted. "[I]ntent is not at issue where intimidation or coercion is obvious" Park v. Thompson, 851 F.3d 910, 920 (9th Cir. 2017)

After an ex parte conversation with Kearney, Judge Michael Callan unintelligibly cancelled the witness subpoena that it had issued for Kearney, (FAVC ¶ 92-94) and then rescheduled the hearing addressing Kearney's misconduct (including the June 18th threats) for two months later, to the same day he scheduled a final pre-trial conference, effectively making it impossible to appeal his approval of Kearney's flagrant misconduct before the FPT conference. "The Supreme Court has established that the government violates due process when its conduct 'effectively dr[ives a] witness off the stand.'" Park v. Thompson, 851 F.3d 910, 919 (9th Cir. 2017) citing Webb v. Texas , 409 U.S. 95, 98, 93 S.Ct. 351, 34 L.Ed.2d 330 (1972)

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

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

In many cases there is "no quarrel with the state laws on the books, instead, the problem is the way those laws are or are not implemented by state officials." Zinermon

v. Burch, 494 U.S. 113, 124-25 (1990) “Denying includes inaction as well as action. And denying the equal protection of the laws includes the omission to protect, as well as the omission to pass laws for protection. These views are fully consonant with this Court's recognition that state conduct which might be described as ‘inaction’ can nevertheless constitute responsible ‘state action’ within the meaning of the Fourteenth Amendment.” Bell v. Maryland, 378 U.S. 226, 309-11 (1964)

I have gone to all the appropriate police departments more than once to address witness intimidation from Kearney, (FAVC ¶ 73) and the only helpful answer I ever got was to file criminal complaints. "[T]here is a constitutional right to have police services administered in a nondiscriminatory manner a right that is violated when a state actor denies such protection to disfavored persons." Elliot-Park v. Manglona, 592 F.3d 1003, 1007 (9th Cir. 2010)

Bivens Federal Action

The Massachusetts Federal District court waited until it dismissed the complaint to deny preliminary injunctions without any reason, that I had claimed were necessary in order to fully present my claims and fairly collect evidence. (FAVC ¶ 103-04) The court *sua sponte* ignored half my state action facts and decided, FAVC ¶ 106) “Plaintiff's claim for a conspiracy in violation of 42 U.S.C. § 1985 fails because he does not allege any facts supporting an agreement by the parties to deprive him of equal protection of the law based on his membership in a protected class.” Waters v. Facebook, Inc., No. CV 20-30168-MGM, 2021 WL 3400607, at *2 (D. Mass. May 11, 2021) However. “[t]here is no such requirement in an action alleging the denial of access to federal court under the first clause of section 1985(2).” Portman v. County of Santa Clara, 995 F.2d 898, 909 (9th Cir. 1993) quoting Kush v. Rutledge, 460 U.S. 719, 726, 103 S.Ct. 1483, 1487, 75 L.Ed.2d 413 (1983)

In my Rule 59e motion I cited Kush and the ignored state action facts, but the court sua sponte decided that I was not allowed to raise arguments in response to the court’s

sua sponte decision, even though I had no prior notice of the courts intent to dismiss or the court's obviously wrong reasoning. FAVC ¶ 108

"[T]he standards utilized to find federal action . . . are identical to those employed to detect state action" Sutton v. Providence St. Joseph Medical Center, 192 F.3d 826, 835 (9th Cir. 1999) "State courts that aid private parties to perform [constitutional violations] implicate the State in conduct proscribed by the Fourteenth Amendment." Evans v. Newton, 382 U.S. 296, 302 (1966) The "aberrant procedure surrounding" Mastroni's sua sponte decisions' "would support a justifiable inference of conspiracy." United Steelworkers of Am. v. Phelps Dodge, 865 F.2d 1539, 1547 (9th Cir. 1989) I presented specific facts that the "stated reasons for the termination were pretextual." Gilbrook v. City of Westminster, 177 F.3d 839, 857 n.9 (9th Cir. 1999)

42 USC 1983 damages

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

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

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

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

There is no issue preclusion

First off, these are all injuries that happened after 3:20-CV-30168 was dismissed. FAVC ¶ 104 "A claim ordinarily accrues when a plaintiff has a complete and present cause of action." Petrella v. Metro-Goldwyn-Mayer, Inc., 572 U.S. 663, 670 (2014)

Second, the state action inquiry is to be done on a case-by-case basis. Supra pg. 17

Third, 3:20-CV-30168 did not give due process, and neither Kearney nor the court argued any opposing arguments for why the ignored state action facts would not hold weight. "Where no judicial resources have been spent on the resolution of a question, trial courts must be eroding the principle of party presentation so basic to our system of adjudication." Arizona v. California, 530 U.S. 392, 412-13 (2000)

Forth, Kearney was regularly threatening me and witnesses preventing me from presenting an effective case. "It is the general rule that issue preclusion attaches only when an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment. In the case of a judgment entered by confession, consent, or default, none of the issues is actually litigated. Therefore, the rule of this Section describing issue preclusion's domain does not apply with respect to any issue in a subsequent action." I.d., at 14 citation omitted.

V. <u>The balance of equities</u>

Aidan Kearney does not have a First Amendment right to intimidate witnesses and deny my right to a fair trial. "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." Ninth Amendment

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

VI. The public's interest.

Unchecked "instances of witness intimidation create the perception that the law cannot protect its citizens and thereby undermines public confidence in the police and government. If individuals believe that they cannot be adequately protected, they are less likely to cooperate with the police," (and Plaintiff's) "which in turn impedes the ability of the police to gather evidence in attempt to stop criminal behavior. Thus, the cycle is vicious and invidious… Each instance of witness intimidation by gang violence or threat of violence reinforces the perception that cooperation with the criminal justice system is dangerous."[2]

"The public welfare demands that the agencies of public justice be not so impotent that they must always be mute and helpless victims of deception and fraud." Hazel-Atlas Co. v. Hartford Co., 322 U.S. 238, 246 (1944)

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

[2] ARTICLE: Balancing the Anonymity of Threatened Witnesses Versus a Defendant's Right of Confrontation: The Waiver Doctrine After Alvarado, 39 San Diego L. Rev. 1165, 1195-6

If this court denies the requested relief, Kearney will feel empowered to keep attacking children, to send more threats like he did on June 18th, and to impersonate more litigants and try to frame them for crimes like he did to me on November 19th.

The Declaration of Independence is clear that when a Government oppresses the public with "a long train of abuses and usurpations", denying "Life, Liberty and the pursuit of Happiness" "it is the[people's] right, it is their *duty*, to throw off such Government, and to provide new Guards for their future security."

If this court does not take its constitutional duty seriously, I will take my duty seriously. (Affidavit at 7) This court's unintelligible refusal to grant relief, would further empower me with a Mass. Const. pt. 1 art. I[3] Right, and affirmative defense against any civil or criminal proceedings that are in response to measures that were necessary to resecure my safety prosperity and happiness. "The U.S. Constitution was written against a background of existing state constitutions, charters, and laws; indeed, it borrowed generously from those constitutions. The U.S. Constitution did not displace such laws, U.S. Const. amend. X, except where it did so expressly" Young v. Hawaii, 992 F.3d 765, 815 (9th Cir. 2021)

I am a religious man who believes the Lord would not have given me access to unlimited power (Affidavit at 6) before forcing me to fight sadistic corruption on accident.

Signature

/S/ Rian Waters

(530)739-8951 Watersrian@gmail.com Dated: 3/27/2022

---

[3] "All people are born free and equal and have certain natural, essential and unalienable rights; among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing and protecting property; in fine, that of seeking and obtaining their safety and happiness…" which is almost the same as Sec. 1 of California's Declaration of Rights