

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, SS.

SUPERIOR COURT
CIVIL ACTION NO. 1879CV00344

RIAN WATERS,)
 Plaintiff)
vs.)
AIDAN KEARNEY,)
WORCESTER DIGITAL MARKETING, LLC)
TURTLEBOY ENTERPRISES, LLC)
SAMANTHA CARDIN,)
JOHN DOES 1-10,)
 Defendants)

HAMPDEN COUNTY
SUPERIOR COURT
FILED

JAN - 2 2019

[Signature]
CLERK OF COURTS

**PLAINTIFF RIAN WATERS EMERGENCY MOTION FOR A TEMPORARY
RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

Now Comes the Plaintiff, Rian Waters, and respectfully requests that pursuant of MRCP 65, this court issue a temporary restraining order on Defendant Aidan Kearney, and hold a hearing to issue a preliminary injunction against Defendants Aidan Kearney, Turtleboy Enterprises LLC, and Worcester Digital Marketing LLC. As grounds therefore, the Plaintiff refers to and incorporates the memorandum of law attached hereto.


Wherefore, based upon the foregoing, the Plaintiff respectfully requests that this court enter

the following:

Handwritten notes:
JW.
2/1/19
2/1/19 After hearing and careful and thorough consideration of the submissions and arguments of the parties, the court finds neither a likelihood of success nor that irreparable harm will result from denial of the injunction. Accordingly, the motion is DENIED.
Mulqueen, J.
Short Order to issue for 1/15/19 @ 2pm.
Mulqueen, J.

1. Enter a Temporary Restraining order against the Defendants, and those parties acting at their direction or command that they immediately remove all, and refrain from posting any other articles/blogs referencing the Plaintiff, and that they stop contacting the Plaintiff until further order of the court.
2. After hearing, enter a Preliminary Injunction, enjoining and restraining the Defendants, and those parties acting at their direction or command that they immediately remove all, and refrain from posting any other articles/blogs referencing the Plaintiff until further order of the court.
3. After hearing, make an order pursuant of MCRP 65 (B)(2) that advances the trial and Summary Judgment hearing.

Respectfully submitted,

Rian Waters

 199 Allen St.
 East Longmeadow, MA. 01028
 (530)739-8951
Watersrian@gmail.com Dated: January 2nd, 2019

Certificate Of Service

I, Rian Waters, hereby certify that on January 2nd, 2019, I served a copy of the above upon the parties in the action by mailing U.S. first class, to:

Kevin Chrisanthopoulos, Esq.
 KC Law
 30 Court Street, Suite 1
 Westfield, MA 01085

Subscribed under the penalties of perjury. 1/2/2019



COMMONWEALTH OF MASSACHUSETTS

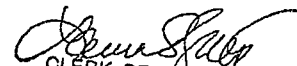
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**PLAINTIFF RIAN WATERS'S EMERGENCY MOTION FOR A TEMPORARY
RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

The Plaintiff's Rian Waters motion should be granted to prevent the Defendants from impairing the Plaintiff's ability to litigate, or causing other irreparable harm. The Plaintiff is very likely to succeed on the merits.

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ARGUMENT

I. LEGAL STANDARD

Temporary Restraining Order

MRCP 65 (a) "A temporary restraining order may be granted without written or oral notice to the adverse party or his attorney only if it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or his attorney can be heard in opposition." "To establish harassment, a complainant must prove that the defendant, motivated by cruelty, hostility, or revenge, wilfully committed three or more acts aimed at a specific person, each with the intent

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to cause that person to experience fear or intimidation, or to cause abuse or damage to property, which, considered together, did in fact cause fear, intimidation, abuse, or damage to property.

O'Brien v. Borowski, 461 Mass. 415, 416, 961 N.E.2d 547, 550, 2012 Mass. LEXIS 19, *1, 2012 WL 255785

Preliminary Injunction

“When asked to grant a preliminary injunction, the judge initially evaluates in combination the moving party's claim of injury and chance of success on the merits. If the judge is convinced that failure to issue the injunction would subject the moving party to a substantial risk of irreparable harm, [Note 11] the judge must then balance this risk against any similar risk of irreparable harm which granting the injunction would create for the opposing party. What matters as to each party is not the raw amount of irreparable harm the party might conceivably suffer, but rather the risk of such harm in light of the party's chance of success on the merits. Only where the balance between these risks cuts in favor of the moving party may a preliminary injunction properly issue.” Packaging Industries Group, Inc. v. Cheney, 380 Mass. 609, 616, 405 N.E.2d 106, 111, 1980 Mass. LEXIS 1141, *14-15

Consolidation of Hearing With Trial on Merits.

“Consolidation is generally desirable in an appropriate case” Packaging Industries Group, Inc. v. Cheney, 380 Mass. (The risk that a party will suffer irreparable harm during the time between the hearing on the preliminary injunction and final adjudication on the merits may be minimized by consolidating the trial on the merits with the preliminary hearing) consolidating and

advancing the trial on the merits would be ideal in this case as the law presented below clearly establishes liability for Libel, and Slander per se.

MCRP 65 (B)(2) "Before or after the commencement of the hearing of an application for a preliminary injunction, the court may order the trial of the action on the merits to be advanced and consolidated with the hearing of the application. This subdivision (b)(2) shall be so construed and applied as to save to the parties any rights they may have to trial by jury."

Defamation

Words spoken orally are not actionable per se, unless they charge the plaintiff with a crime

Lynch v. Lyons, 303 Mass. 116, 116, 20 N.E.2d 953, 954, 1939 Mass. LEXIS 919, *1"The article in question charged the plaintiff with a criminal offense. It was libellous on its face, and the judge correctly so ruled." Lundin V Post Publishing. "To prevail on a claim of defamation, a plaintiff must establish that the defendant was at fault for the publication of a false statement regarding the plaintiff, capable of damaging the plaintiff's reputation in the community, which either caused economic loss or is actionable without proof of economic loss. See Ravnikar v. Bogojavlensky, 438 Mass. 627, 629-630, 782 N.E.2d 508 (2003) White v. Blue Cross & Blue Shield of Mass. 442 Mass. 64, 66, 809 N.E.2d 1034, 1036, 2004 Mass. LEXIS 305, *4-5, 21 I.E.R. Cas. (BNA) 70

II. A TEMPORARY ORDER IS NECESSARY

The Defendants have been publishing defamatory allegations and using threats to affect the Plaintiff's ability to litigate at important times. One of the Defendant's writers sent the Plaintiff an email stating that they are planning to finish writing an article about the Plaintiff on January 2nd 2019, which is only 7 days from the default judgment hearing. Defendant Aidan Kearney

has admitted in his book that he is the editor of Turtleboy Sports. The following dates are an incomplete list of past harassment;

1. On November 11, 2018 Defendant Aidan Kearney threatened the Plaintiff on his online show that was recorded, and is available to watch on demand. Stating "Fuck that asshole, I hope he's listening. He thinks I'm scared of him, fuck you Rian Waters, He killed a dog in front of a special needs daughter, and that whole story is going to come out too by the way, I'm going to bury that mother fucker, that guy is going to die, I'm going to, not really die, I am going to fucking murder him with words and we are going to bury him, and he teamed up with his new boyfriend Mike Gaffney"
2. In the beginning of November 2018, Aidan Kearney published a book that was first available for sale on or about November 13th, which accuses the Plaintiff of several criminal allegations, and states inaccurate and unfair statements of a judicial proceeding
3. On December 27, 2018 The Defendants published another article about the Plaintiff, and wrote false statements on facebook including "the vet who examined the dog testified that He killed the dog. Case stopped because he basically intimidated the victim from testifying" No vet ever testified in court, (Exhibit B) and the Plaintiff did not intimidate or even contact Defendant Samantha Cardin before the final hearing.

Rule 2.6 of the Code of Judicial Conduct allows "A judge may make reasonable efforts, consistent with the law,* to facilitate the ability of all litigants, including self-represented litigants, to be fairly heard."

III. PLAINTIFF'S RISK OF IRREPARABLE HARM

Defendant Aidan Kearney has made serious threats directed at the Plaintiff.

"Fuck that asshole, I hope he's listening. He thinks I'm scared of him, fuck you Rian Waters, He killed a dog in front of a special needs daughter, and that whole story is going to come out too by the way, I'm going to bury that mother fucker, that guy is going to die, I'm going to, not really die, I am going to fucking murder him with words and we are going to bury him"

The Defendant's business and past history make their threats very serious.

The Defendants operate a public shaming device, and the targets of their articles often get harrassed without the Defendants risking any liability. In Mr. Kearney's book he admits that one of his followers created a website, and made an unfounded allegation that a different Plaintiff who sued the Defendants, had been guilty of sexually assaulting a 14 year old girl.

The Defendants have been intimidating the Plaintiff to impair his ability to litigate.

A Facebook account that represents the Defendants business, messaged the Plaintiff the day before they served their motion to remove default saying, " Get ready homeboy, funs just getting started." Defendant Aidan Kearney (Mr. Kearney) wrote a book titled " I am Turtleboy" which was not available for purchase until the week before the hearing to remove the default.

The book contained several defamatory statements including but not limited to the following;

- a. Rian Waters sold drugs in California
- b. Shipped himself drugs via the USPS, which he intended to sell here.
- c. allegedly assaulted her, causing the black eye.
- d. He then went into the house and killed the dog in front of his special needs daughter by stomping it in the back.

- e. Everything she had posted on Facebook was true, and she had finally gotten the courage to speak out against her abuser. I know this as a fact because Rian had a trial and it all came out.

The Defendants article has been preventing the Plaintiff from being gainfully employed.

Currently when you google the Plaintiff's name the defamatory article is on the first page, which prevents the Plaintiff from working any executive positions.

IV. THE DEFENDANTS HAVE VERY LITTLE RISK OF HARM

Retracting the defamatory article will not cost anything.

When discussing the defamatory article in an email The Defendant's said "No one reads that blog anymore so it's of no use to me or the site."

The Plaintiff is not requesting to limit any legal speech.

"The First Amendment does not protect conduct that threatens another." *Commonwealth v. Robicheau*, 421 Mass. 176, 183, 654 N.E.2d 1196 (1995). *Commonwealth v. Sholley*, 432 Mass. 721, 726-727, 739 N.E.2d 236, 241, 2000 Mass. LEXIS 710, *12-13 "A "true threat" need not take the form of an explicit statement that the speaker intends to cause imminent, physical harm to the victim, but may comprise "words or actions that -- taking into account the context in which they arise -- cause the victim to fear such harm now or in the future." *O'Brien v. Borowski*, 461 Mass. at 425. see also *Black*, 538 U.S. at 362-363 and *Walters v commonwealth* "An accusation purporting to rest on hearsay is none the less defamatory." *Maloof v. Post Pub. Co.*, 306 Mass. 279, 280, 28 N.E.2d 458, 458-459, 1940 Mass. LEXIS 931, *3-4 "the right of a party to make charges gives no right to others to spread them" *Lundin v. Post Pub. Co.*, 217 Mass. 213, 215-217, 104 N.E. 480, 481-482, 1914 Mass. LEXIS 1211, *2-6

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V. THE DEFENDANTS DO NOT HAVE A LEGAL DEFENSE

The First Amendment does not protect the Defendants.

Even if the Defendants could convince this court or a jury that the defamation in their book and article is about a matter of public interest, the constitution does not protect them. "The First Amendment protection afforded to defendants against defamation suits by public persons is not to be extended to defamation suits by private individuals even though the defamatory statements concern an issue of public or general interest" Stone v. Essex County Newspapers, Inc., 367 Mass. 849, 857-858, 330 N.E.2d 161, 167-168, 1975 Mass. LEXIS 907, *15-16 see also Gertz v. Robert Welch, 418 U.S. *id.* at 346 "there is no constitutional value in false statements of fact. HN2 Neither the intentional lie [****27] nor the careless error materially advances society's interest in "uninhibited, robust, and wide-open" debate on public issues." New York Times Co. v. Sullivan, 376 U.S., at 270 Gertz v. Robert Welch, 418 U.S. 323, 339-340, 94 S. Ct. 2997, 3007, 41 L. Ed. 2d 789, 805, 1974 U.S. LEXIS 88, *26-27, 1 Media L. Rcp. 1633

Section 230 of the Communications Decency Act does not protect the Defendants

1. The defamatory article written about the Plaintiff on the Defendants website does not contain a disclaimer or statement indicating that the article was written by a third party. Someone arriving from Google would have no reason to believe a third party published it.
2. The Defendants have re-published the article on Facebook,

- 3. The book Mr. Kearney wrote and published (I am Turtleboy) not only contains all the same defamatory allegations as The Article, as well as some additional defamatory allegations.

The Defendants Argument that a third party published the article is meritless

The user name that published the article is Turtleboy, and the writer referred to themselves as Turtleboy twice in the article. The Defendants refer to themselves as Turtleboy whenever a matter concerns their business. Therefore respondeat superior certainly applies in this case.

Even if the Defendants could prove that they were not responsible for the initial publication of The Article, they are considered publishers due to their re-publishing, and failure to remove the defamatory content. "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)

The Defendants Article was not privileged.

The Defendants do not attempt to argue that the article was privileged, as they claim that an un-namable employee wrote the article. Regardless even if they had claimed that the article was privileged, the article does not cite any judicial proceeding, and could not be considered a fair or accurate report. The article stated several inaccurate details, including stating that the Plaintiff found his dog buried under a pile of rubble. The Defendants still have not made any attempt to fix the defamation, and they have been unwilling to look at any of the plaintiff's evidence. "the reasons for allowing fair reports of the proceedings of courts of justice "have no application whatever to the contents of a preliminary written statement of a claim or charge. These do not constitute a proceeding in open court. Knowledge of them throws no light upon the

administration of justice. Both form and contents depend wholly on the will of a private individual, who may not be even an officer of the court. It would be carrying privilege farther than we feel prepared to carry it" Lundin v. Post Pub. Co., 217 Mass.

Additionally some of the defamatory allegations that Mr. Kearney wrote and published in his book "I am Turtleboy" were not part of any judicial proceeding.

The Defendants First, Second, and Third Affirmative Defenses of Contributory Negligence are not Material.

"because the defendant had no privilege to report these charges, it took the risk, when it chose to repeat them, of being held liable for any damage thus caused to this plaintiff. The privilege [***8] which that woman enjoyed of stating her charges against this plaintiff for the purpose of having them adjudicated did not extend to this defendant or afford it any defense for the publication of libelous matter." Lundin v. Post Pub. Co., 217 Mass. 213, 218, 104 N.E. 480, 482, 1914 Mass. LEXIS 1211, *7-8

"If one private citizen wrote to another that a high official had taken a bribe, no one would think good faith a sufficient answer to an action. He stands no better, certainly, when he publishes his writing to the world through a newspaper, and the newspaper itself stands no better than the writer." Burt v. Advertiser Newspaper Co., 154 Mass. 238, 242-244, 28 N.E. 1, 4, 1891 Mass. LEXIS 100, *9-13

But the right of a party to make charges gives no right to others to spread them.'

Lundin v. Post Pub. Co., 217 Mass. 213, 215-217, 104 N.E. 480, 481-482, 1914 Mass. LEXIS 1211, *2-6

Even if the Defendants could prove that they were not responsible for the initial publication of The Article, they are considered publishers due to their re-publishing, and failure to remove the defamatory content. "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)

The Plaintiff has a right of action as a matter of law. The Defendants Forth and Fifth defense's have no merit.

"An imputation of crime is defamatory per se" Stone v. Essex County Newspapers, Inc., 367 Mass. 849, 850, 330 N.E.2d 161, 164, 1975 Mass. LEXIS 907. "The defendant published in its newspaper a statement that it was alleged that the plaintiff had committed an assault upon a woman named, which had resulted in stated personal injuries to her. For this publication the plaintiff had a right of action, unless it was privileged, or unless it was true, or unless for some other reason it was not libellous." Lundin v. Post Pub. Co., 217 Mass. The mere fact that the charge against the plaintiff was not made by direct averment but only by saying that such an allegation had been made was not material; for the statement of unfounded charges is none the less actionable that it is made only by way of repeating them as having been made by others. Kimball v. Post Publishing Co. 199 Mass. 248, 251, et seq.

The Defendant's Sixth Defense of Truth has no merit.

Defendant Samantha Cardin has effectively admitted to the Plaintiff's allegations by defaulting in this action for Malicious Prosecution, and Libel. "if the court determines that the defendant is in default, his liability is established and may not be contested." Reportes notes under mrcp 55. Ms. Cardin also lied about evidence to investigators, and the version of events Ms. Cardin stated in the article does not make sense when compared with the timeline of events from that day. The Defendants will be hard pressed to maintain this defense "The burden of proof was on the

defendants to maintain that defence by showing the substantial truth of the charge in all material respects. *Perry v. Porter*, 124 Mass. 338." *Maloof v. Post Pub. Co.*, 306 Mass. 279, 280, 28 N.E.2d 458, 458-459, 1940 "However, to the extent that the articles contained false statements, the privilege did not apply and it was irrelevant whether the newspaper had cause to believe that those statements were true." *Burt v. Advertiser Newspaper Co.*, 154 Mass. 238, 242, 28 N.E. 1, 4, 1891 Mass. LEXIS 100, *6

The Defendants Seventh Defense that the Statements were made without Malice is without merit and irrelevant.

The Defendants operate a public shaming device, and the stated reason for the article is because they like watching the world burn. Regardless the Plaintiff is not a public official, so malice is not a necessary element in this action.

The Defendants Eighth Defense that the statements are not reasonably capable of defamatory meaning is without merit.

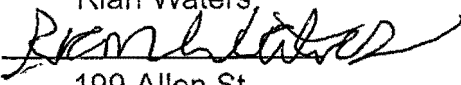
"The mere fact that the charge against the plaintiff was not made by direct averment but only by saying that such an allegation had been made was not material; for the statement of unfounded charges is none the less actionable that it is made only by way of repeating them as having been made by others." *Kimball v. Post Publishing Co.* 199 Mass. 248, 251, et seq."

"The fact that the charge was qualified by the words "it is alleged" or their equivalent, does not absolve the defendants from responsibility for publishing it. *HNI* An accusation purporting to rest on hearsay is none the less defamatory." *Maloof v. Post Pub. Co.*, 306 Mass. 279, 280, 28 N.E.2d 458, 458-459, 1940 Mass. LEXIS 931, *3-4

The Plaintiff can prove damages, but is not required to do so.

"At the heart of the libel-and-slander-per-se [*373] damage scheme lay the award of general damages for loss [****80] of reputation. They were granted without special proof because the judgment of history was that the content of the publication itself was so likely to cause injury and because "in many cases the effect of defamatory statements is so subtle and indirect that it is impossible directly to trace the effects thereof in loss to the person defamed." Gertz v. Robert Welch, 418 U.S. 323, 372-373, 94 S. Ct. 2997, 3023, 41 L. Ed. 2d 789, 824, 1974 U.S. LEXIS 88, *78-80, 1 Media L. Rep. 1633

Respectfully submitted,

Rian Waters

199 Allen St.
East Longmeadow, MA. 01028
(530)739-8951
Watersrian@gmail.com Dated: January 2nd, 2019

Affidavit of Rian Waters

1. I am the Pro Se Plaintiff in the above captioned matter.
2. The Defendants have been using intimidation to affect my ability to litigate at important times.
3. One of the Defendants writers told me in an email that they plan on writing a story about me on January 2nd 2019, which is a week before the default judgment hearing.
4. On or about November 11th Aidan Kearney threatened me on his online show that was recorded, and is available to watch on demand. Stating "Fuck that asshole, I hope he's listening. He thinks I'm scared of him, fuck you Rian Waters, He killed a dog in front of a special needs daughter, and that whole story is going to come out too by the way, I'm going to bury that mother fucker, that guy is going to die, I'm going to, not really die, I am going to fucking murder him with words and we are going to bury him"

5. Once I became aware of Mr.Kearney's threat, I felt uncomfortable being inside my residence, and have since avoided it.

6. Aidan Kearney wrote a book titled "I am Turtleboy" and had it first published in November 2018. The book was not available for purchase until on or about November 13th 2018. The book contained several defamatory statements including but not limited to the following;
 - a. Rian Waters sold drugs in California
 - b. Shipped himself drugs via the USPS, which he intended to sell here.
 - c. allegedly assaulted her, causing the black eye.
 - d. He then went into the house and killed the dog in front of his special needs daughter by stomping it in the back.
 - e. Everything she had posted on Facebook was true, and she had finally gotten the courage to speak out against her abuser. I know this as a fact because Rian had a trial and it all came out.

7. No veterinarian ever testified in court against me, and I will attach the Docket to the summary judgment motion.

Signed under the pains and penalties of perjury this 2nd day of January 2019

