

No. 21-1582

**United States Court of Appeals
for the First Circuit**

RIAN G. WATERS

Plaintiff-Appellant,

v.

FACEBOOK INC.; GOOGLE LLC.; AIDAN KEARNEY,

Defendants-Appellees

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

Defendants,

On Appeal from the United States District Court
District of Massachusetts, Civil Action No. 3:20-CV-30168-MGM
The Honorable Mark G. Mastroianni, District Judge

APPENDIX OF APPELLEE FACEBOOK, INC.

KEKER, VAN NEST & PETERS LLP
MATAN SHACHAM (First Circuit Bar No. 1184749)
ERICA S. MIRANDA (First Circuit Bar No. 1199671)
633 Battery Street
San Francisco, CA 94111-1809
Telephone: 415 391-5400
Facsimile: 415 391-7188
Email: mshacham@keker.com; emiranda@keker.com

Attorneys for Defendant-Appellee
FACEBOOK, INC.

Rian G. Waters v. Facebook, Inc., et al.
United States Court of Appeal for the First Circuit
Case No. 21-1582

INDEX OF APPELLEE’S APPENDIX

Dkt. No.	Date	Description	Page(s)
37	01-08-2021	Defendant Facebook, Inc.’s Motion to Dismiss Plaintiff’s Complaint	001–004
38	01-08-2021	Defendant Facebook, Inc.’s Memorandum in Support of Motion to Dismiss Plaintiff’s Complaint	005–024
49	01-25-2021	Defendant Facebook, Inc.’s Motion to Dismiss Plaintiff’s First Amended Complaint	025–028
50	01-25-2021	Defendant Facebook, Inc.’s Memorandum in Support of Motion to Dismiss Plaintiff’s First Amended Complaint	029–056
66	02-22-2021	Plaintiff’s Opposition to Defendant Facebook, Inc.’s Motion to Dismiss Plaintiff’s First Amended Complaint	057–070
71	03-09-2021	Plaintiff’s Motion for Injunctive Relief Pursuant to Local Rule 83.2.2	071–073
71-1	03-09-2021	Plaintiff’s Memorandum in Support of Motion for Injunctive Relief Pursuant to Local Rule 83.2.2	074–081

Rian G. Waters v. Facebook, Inc., et al.
United States Court of Appeal for the First Circuit
Case No. 21-1582

71-2	03-09-2021	Waters Affidavit in Support of Motion for Injunctive Relief Pursuant to Local Rule 83.2.2	082–088
81-1	04-15-2021	Plaintiff’s Third Proposed Second Amended Complaint (operative complaint)	089–119
89	05-11-2021	Order Dismissing Plaintiff’s Claims	120–124
90	05-11-2021	Judgment of Dismissal	125
91	05-13-2021	Plaintiff’s Motion to Alter or Amend the Judgment Pursuant to Federal Rule of Civil Procedure 59(e)	126–127
91-1	05-13-2021	Plaintiff’s Memorandum in Support of Motion to Alter or Amend the Judgment Pursuant to Federal Rule of Civil Procedure 59(e)	128–136
92	05-27-2021	Defendant Facebook, Inc.’s Opposition to Plaintiff’s Motion to Alter or Amend the Judgment Pursuant to Federal Rule of Civil Procedure 59(e)	137–148
93	07-22-2021	Order Denying Motion to Alter or Amend the Judgment	149

Rian G. Waters v. Facebook, Inc., et al.
United States Court of Appeal for the First Circuit
Case No. 21-1582

94	07-29-2021	Plaintiff's Notice of Appeal	150–151
98-1	09-19-2021	Plaintiff's Motion for Relief from Judgment Pursuant to Federal Rule of Civil Procedure 60(b)	152–153
98-2	09-19-2021	Plaintiff's Memorandum in Support of Motion for Relief from Judgment Pursuant to Federal Rule of Civil Procedure 60(b)	154–190
98-3	09-19-2021	Waters Affidavit in Support of Motion for Relief from Judgment Pursuant to Federal Rule of Civil Procedure 60(b)	191
99	10-12-2021	Order Denying Motion for Relief from Judgment	192–193
		Docket Report, Case No. 3:20-CV-30168 MGM	194–202

1 KEKER, VAN NEST & PETERS LLP
2 MATAN SHACHAM – Cal Bar # 262348
3 mshacham@keker.com
4 (Pro Hac Vice Application Pending)
5 ERICA MIRANDA – Cal Bar # 325188
6 emiranda@keker.com
7 (Pro Hac Vice Application Pending)
8 633 Battery Street
9 San Francisco, CA 94111-1809
10 Telephone: 415 391 5400
11 Facsimile: 415 397 7188

7 KIERNAN, TREBACH LLP
8 JOSEPH ARONSON (BBO#022070)
9 jaronson@kiernantrebach.com
10 40 Court Street, 3rd Floor
11 Boston, MA 02108
12 Telephone: 617 426 3900
13 Facsimile: 617 426 0380

11 Attorneys for Defendant FACEBOOK INC.

12
13 UNITED STATES DISTRICT COURT
14 DISTRICT OF MASSACHUSETTS

15 RIAN WATERS,

16 Plaintiff,

17 v.

18 FACEBOOK INC., GOOGLE LLC.,
19 OFFICER JEREMY HALEY, AIDAN
20 KEARNEY, KATHERINE PETER,
21 SPRINGFIELD POLICE, DR. MARTHA
22 SMITH-BLACKMORE, WILLIAM
23 HIGGINS, MAURA HEALEY, JOHN DOES
24 1-10,

25 Defendant.

Case No. 3:20-CV-30168 MGM

**DEFENDANT FACEBOOK, INC.'S
MOTION TO DISMISS**

Judge: Hon. Mark G. Mastroianni

Date Filed: October 26, 2020

Trial Date: None Set

DEFENDANT FACEBOOK, INC.'S MOTION TO DISMISS

Defendant Facebook, Inc. ("Facebook") hereby moves, pursuant to Federal Rule of Civil Procedure 12, to dismiss all claims against Facebook. In support of this motion, Facebook states as follows:

1. Facebook has today filed a Memorandum of Points and Authorities in Support of the Motion.
2. A proposed order is attached hereto.

WHEREFORE, Facebook respectfully requests that this Court grant this motion.

Respectfully submitted,

Dated: January 8, 2021

KIERNAN, TREBACH LLP

KEKER VAN NEST & PETERS, LLP
MATAN SHACHAM
Cal Bar # 262348
(Pro Hac Vice Application Pending)
ERICA MIRANDA
Cal Bar # 325188
(Pro Hac Vice Application Pending)

By: /s/ Joseph Aronson
JOSEPH ARONSON (BBO#022070)
jaronson@kiernantrebach.com
40 Court Street, 3rd Floor
Boston, MA 02108
Telephone: 617 426 3900
Facsimile: 617 426 0380

Attorneys for Defendant FACEBOOK
INC.

**[PROPOSED] ORDER GRANTING DEFENDANT FACEBOOK, INC.'S MOTION TO
DISMISS**

Whereas this matter has come before the Court pursuant to Defendant Facebook, Inc.'s Motion to Dismiss, and the Court, having considered the motion and any opposition thereto, it is hereby:

ORDERED that Facebook, Inc.'s Motion to Dismiss is GRANTED as to all claims against Facebook, and all claims against Facebook are dismissed.

This ____ day of _____, 2021

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

RIAN WATERS,
Plaintiff

v.

FACEBOOK INC,
GOOGLE LLC,
OFFICER JEREMY HALEY,
AIDAN KEARNEY,
KATHERINE E. PETER,
DR. MARTHA SMITH-BLACKMORE,
JIM DALTON,
WILLIAM HIGGIS,
MAURA HEALEY,
JOE DOES 1-10,
Defendants

C.A. NO. 3:20CV30168

CERTIFICATE OF SERVICE

I, Joseph H. Aronson, hereby certify that on January 8, 2021, Defendant Facebook, Inc.'s Motion to Dismiss along with Supporting Memorandum was filed through the ECF system and was sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF). A copy of the foregoing was served upon plaintiff Rian Waters by email and by first class mail to Rian Waters, 199 Allen Street, E. Longmeadow, MA 01116.

Facebook, Inc.,

By its attorney,

/s/ Joseph H. Aronson

Joseph H. Aronson (BBO#022070)
Kiernan Trebach LLP
40 Court Street, 3rd Floor
Boston, MA 02108
617 426 3900
jaronson@kiernantrebach.com

Dated: January 8, 2021

1 KEKER, VAN NEST & PETERS LLP
MATAN SHACHAM – Cal Bar # 262348
2 mshacham@keker.com
(Pro Hac Vice Application Pending)
3 ERICA S. MIRANDA - # 325188
emiranda@keker.com
4 (Pro Hac Vice Application Pending)
633 Battery Street
5 San Francisco, CA 94111-1809
Telephone: 415 391 5400
6 Facsimile: 415 397 7188

7 KIERNAN, TREBACH LLP
JOSEPH ARONSON (BBO#022070)
8 jaronson@kiernantrebach.com
40 Court Street, 3rd Floor
9 Boston, MA 02108
Telephone: 617 426 3900
10 Facsimile: 617 426 0380

11 Attorneys for Defendant FACEBOOK INC.

12 UNITED STATES DISTRICT COURT

13 DISTRICT OF MASSACHUSETTS

14 RIAN WATERS,

15 Plaintiff,

16 v.

17 FACEBOOK INC., GOOGLE LLC.,
OFFICER JEREMY HALEY, AIDAN
18 KEARNEY, KATHERINE PETER,
SPRINGFIELD POLICE, DR. MARTHA
19 SMITH-BLACKMORE, WILLIAM
HIGGINS, MAURA HEALEY, JOHN DOES
20 1-10,

21 Defendant.

Case No. 3:20-CV-30168 MGM

**MEMORANDUM IN SUPPORT OF
DEFENDANT FACEBOOK INC.'S
MOTION TO DISMISS**

Judge: Hon. Mark G. Mastroianni

Date Filed: October 26, 2020

Trial Date:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

Page No.

I.	INTRODUCTION	1
II.	FACTUAL ALLEGATIONS AND PROCEDURAL HISTORY	1
A.	Plaintiff’s Allegations Against Kearney	1
B.	Plaintiff’s Allegations Against Facebook	3
C.	Procedural History	4
III.	ARGUMENT	4
A.	Plaintiff fails to state a claim against Facebook.....	4
1.	Plaintiff fails to state a claim against Facebook under federal law.....	5
2.	The Court lacks subject-matter jurisdiction over Plaintiff’s state-law claims—for which he also fails to state claim against Facebook.	8
B.	Plaintiff’s claims are barred by Section 230(c)(1) of the Communications Decency Act.	9
IV.	CONCLUSION.....	14

TABLE OF AUTHORITIES**Page(s)****Federal Cases**

<i>Abdel-Aleem v. OPK Biotech LLC</i> , 665 F.3d 38 (1st Cir. 2012).....	8
<i>Alexis v. McDonald’s Restaurants of Massachusetts, Inc.</i> , 67 F.3d 341 (1st Cir. 1995).....	6
<i>Am. Honda Fin. Corp. v. City of Revere</i> , No. 1:19-CV-10266-ADB, 2020 WL 3840905 (D. Mass. July 8, 2020).....	6
<i>Ashcroft v. Iqbal</i> , 556 U.S. 662 (2009).....	4
<i>Atkinson v. Facebook, Inc.</i> , 3:20-CV-05546-RS, slip op. (N.D. Cal. Dec. 7, 2020).....	6
<i>Aulson v. Blanchard</i> , 83 F.3d 1 (1st Cir. 1996).....	7
<i>Balistreri v. Pacifica Police Dep’t</i> , 901 F.2d 696 (9th Cir. 1990)	4
<i>Barnes v. Yahoo!, Inc.</i> , 570 F.3d 1096 (9th Cir. 2009)	12, 13
<i>Bell v. Mazza</i> , 394 Mass. 176 (1985)	9
<i>Caraccioli v. Facebook, Inc.</i> , 167 F. Supp. 3d 1056 (N.D. Cal. 2016)	10
<i>Carafano v. Metrosplash.com, Inc.</i> , 339 F.3d 1119 (9th Cir. 2003)	10
<i>Cohen v. Facebook, Inc.</i> , 252 F. Supp. 3d 140 (E.D.N.Y. 2017)	11
<i>Cook v. Gates</i> , 528 F.3d 42 (1st Cir. 2008).....	4
<i>Cross v. Facebook</i> , ¹⁴ Cal. App. 5th 190, 213 (2017)	10

1	<i>DeLima v. YouTube, LLC</i> ,	
2	No. 17-CV-733-PB, 2018 WL 4473551 (D.N.H. Aug. 30, 2018), <i>report and</i>	
3	<i>recommendation adopted sub nom. DeLima v. YouTube Inc.</i> , No. 17-CV-733-	
	PB, 2018 WL 4471721 (D.N.H. Sept. 18, 2018).....	5
4	<i>Dep't of Rec. & Sports of Puerto Rico v. World Boxing Ass'n</i> ,	
5	942 F.2d 84 (1st Cir. 1991).....	8
6	<i>Doe II v. MySpace, Inc.</i> ,	
	175 Cal. App. 4th 561 (2009)	10
7	<i>Dyroff v. Ultimate Software Grp.</i> ,	
8	934 F.3d 1093 (9th Cir. 2019)	12
9	<i>Enigma Software Group USA, LLC v. Malwarebytes, Inc.</i> ,	
10	946 F.3d 1040 (9th Cir. 2019)	13
11	<i>Fed. Agency of News LLC v. Facebook, Inc.</i> ,	
	395 F. Supp. 3d 1295 (N.D. Cal. 2019).....	5, 6, 10
12	<i>Fed. Agency of News LLC v. Facebook, Inc.</i> ,	
13	432 F. Supp. 3d 1107 (N.D. Cal. 2020)	12
14	<i>Fehrenbach v. Zeldin</i> ,	
15	No. 17-CV-5282 (JFB) (ARL), 2018 WL 4242452 (E.D.N.Y. Aug. 6, 2018).....	5, 6
16	<i>Forbes v. Facebook, Inc.</i> ,	
	No. 16 CV 404 (AMD), 2016 WL 676396 (E.D.N.Y. Feb. 18, 2016)	5
17	<i>Force v. Facebook</i> ,	
18	934 F.3d 53 (2nd Cir. 2019).....	12, 13
19	<i>Griffin v. Breckenridge</i> ,	
20	403 U.S. 88 (1971).....	7
21	<i>Hahn v. Sargent</i> ,	
	523 F.2d 461 (1st Cir. 1975).....	7
22	<i>Jane Doe No. 1 v. Backpage.com, LLC</i> ,	
23	817 F.3d 12 (1st Cir. 2016).....	10, 12, 13
24	<i>Jurin v. Google, Inc.</i> ,	
25	695 F. Supp. 2d 1117 (E.D. Cal. 2010).....	10, 12
26	<i>King v. Facebook, Inc.</i> ,	
	No. 19-CV-01987-WHO, 2019 WL 4221768 (N.D. Cal. Sept. 5, 2019)	11
27	<i>King v. Friends of Kelly Ayotte</i> ,	
28	860 F. Supp. 2d 118 (D.N.H. 2012).....	6

1	<i>Klayman v. Zuckerberg,</i>	
2	753 F.3d 1354 (D.C. Cir. 2014).....	11
3	<i>Lancaster v. Alphabet Inc.,</i>	
4	No. 15-cv-05299-HSG, 2016 WL 3648608 (N.D. Cal. July 8, 2016).....	10
5	<i>Lugar v. Edmondson Oil Co., Inc.,</i>	
6	457 U.S. 922 (1982).....	6
7	<i>Malwarebytes, Inc. v. Enigma Software Group USA, LLC,</i>	
8	No. 19-1284, 2020 WL 6037214 (U.S. Oct. 13, 2020).....	13
9	<i>Marshall's Locksmith Serv. Inc. v. Google, LLC,</i>	
10	925 F.3d 1263 (D.C. Cir. 2019).....	12
11	<i>Maymi v. Puerto Rico Ports Auth.,</i>	
12	515 F.3d 20 (1st Cir. 2008).....	7
13	<i>Nemet Chevrolet, Ltd. v. Consumeraffairs.com, Inc.,</i>	
14	591 F.3d 250 (4th Cir. 2009)	10
15	<i>Nyabwa v. Facebook,</i>	
16	No. 2:17-CV-24, 2018 WL 585467 (S.D. Tex. Jan. 26, 2018).....	5
17	<i>O'Rourke v. Hampshire Council of Governments,</i>	
18	121 F. Supp. 3d 264 (D. Mass. 2015).....	7
19	<i>Obado v. Magedson,</i>	
20	No. 13-2382 (JAP), 2014 WL 3778261 (D.N.J. July 31, 2014).....	10
21	<i>Pennie v. Twitter, Inc.,</i>	
22	281 F. Supp. 3d 874 (N.D. Cal. 2017)	12
23	<i>Perez-Sanchez v. Pub. Bldg. Auth.,</i>	
24	531 F.3d 104 (1st Cir. 2008).....	7
25	<i>Riggs v. MySpace, Inc.,</i>	
26	444 F. App'x 986 (9th Cir. 2011)	10
27	<i>Santiago v. Puerto Rico,</i>	
28	655 F.3d 61 (1st Cir. 2011).....	5, 6
	<i>Shulman v. Facebook.com,</i>	
	No. 17-764 (JMV), 2017 WL 5129885 (D.N.J. Nov. 6, 2017).....	5
	<i>Sikhs for Justice "SFJ", Inc. v. Facebook, Inc.,</i>	
	144 F. Supp. 3d 1088 (N.D. Cal. 2015)	10, 11
	<i>United Broth. of Carpenters & Joiners of America, Local 610, AFL-CIO v. Scott,</i>	
	463 U.S. 825 (1983).....	7

1	<i>Universal Commun. Sys., Inc. v. Lycos, Inc.</i> ,	
2	478 F.3d 413 (1st Cir. 2007).....	10, 12, 13
3	<i>Yeo v. Town of Lexington</i> ,	
4	131 F. 3d 241 (1st Cir. 1997).....	5
5	<i>Young v. Facebook, Inc.</i> ,	
6	No. 5:10-cv-03579-JF/PVT, 2010 WL 4269304 (N.D. Cal. Oct. 25, 2010)	5, 6
7	Federal Statutes	
8	28 U.S.C. § 1332.....	8
9	28 U.S.C. § 1367.....	8
10	42 U.S.C. § 1983.....	4, 5, 6
11	42 U.S.C. § 1985(2).....	3, 6, 7
12	42 U.S.C. § 1985(3).....	3, 6, 7
13	42 U.S.C. § 1986.....	4, 6, 7, 8
14	Communications Decency Act Section 230	<i>passim</i>
15	State Cases	
16	<i>Foley v. Polaroid Corp.</i> ,	
17	400 Mass 82 (1987)	9
18	<i>Polay v. McMahon</i> ,	
19	468 Mass. 379 (2014)	9
20	State Statutes	
21	Mass. Gen. Laws Ch. 12, §11H.....	9
22	Mass. Gen. Laws Ch. 12, § 11I.....	8, 9
23	Other Authorities	
24	First Amendment	3, 5, 6, 7
25	Eighth Amendment.....	5
26	Federal Rule of Civil Procedure 12	1
27	Massachusetts Constitution Article XII.....	3, 8
28		

Pursuant to Federal Rule of Civil Procedure 12, Facebook respectfully moves to dismiss the claims against it.

I. INTRODUCTION

Pro se plaintiff Rian Waters alleges that Defendants Aidan Kearney, Katherine Peter, and others associated with Kearney’s Turtleboy Sports online persona have engaged in various acts of wrongdoing against him, including posting hurtful and harassing statements about him on several online forums. Further, Plaintiff attempts to morph this dispute with Kearney into a far-reaching conspiracy involving the entire Springfield Police Department, his public defender, and even the Massachusetts Attorney General. The details of Plaintiff and Kearney’s personal dispute are unclear, and Plaintiff may or may not have claims against Kearney and the other individual defendants. But Plaintiff improperly seeks to drag Facebook into this dispute. He includes only a handful of vague allegations against Facebook to support his prayer for compensatory damages, punitive damages, and unspecified injunctive relief.

Plaintiff’s Complaint fails for three reasons: (1) each of his claims is facially deficient; (2) the Court lacks jurisdiction over the state-law claims; and (3) the claims against Facebook are barred by Section 230(c)(1) of the Communications Decency Act (CDA). Indeed, claims such as these, which seek to hold an online platform operator such as Facebook liable for allegedly offensive content posted by another user, are precisely the sort of claims that Section 230(c)(1) of the CDA was intended to bar, and courts around the country have repeatedly and consistently rejected such claims as a result.

For these reasons, and as detailed below, the Court should grant Facebook’s Motion to Dismiss.

II. FACTUAL ALLEGATIONS AND PROCEDURAL HISTORY

A. Plaintiff’s Allegations Against Kearney¹

Plaintiff’s Complaint (Dkt. 1) alleges an ongoing personal dispute with Aidan Kearney

¹ These facts closely mirror the facts included in Facebook’s opposition to Plaintiff’s Motion for a Temporary Restraining Order. (“TRO Opposition,” Dkt. 33.) That’s because Plaintiff provided limited evidence to support his motion. (“TRO Motion,” Dkt. 17; “TRO Brief,” Dkt. 18; “Waters Affidavit,” Dkt. 19; “Exhibit A,” Dkt. 19-1; “Exhibit B,” Dkt. 19-2.)

1 dating back to January 2017, when Kearney posted about Plaintiff’s arrest for alleged animal
 2 cruelty and battery.² Plaintiff asserts he was arrested because Samantha Cardin falsely accused
 3 him of these crimes to Defendant Officer Jeremy Haley—who then lied about Plaintiff admitting
 4 to those crimes and stole \$300 from his pocket.³ As a result of Kearney’s postings, Plaintiff
 5 began receiving threats.⁴ Plaintiff’s public defender, Defendant William Higgins, allegedly failed
 6 to provide exculpatory evidence to him and his new counsel.⁵ But eventually the charges were
 7 dropped, and Plaintiff sued Kearney for libel, slander, and intentional infliction of emotional
 8 distress.⁶

9 According to the Complaint, Kearney’s alleged cyber-bullying campaign spanned
 10 multiple platforms: Kearney’s blog, Facebook, and YouTube.⁷ Kearney and his followers
 11 harassed him using multiple accounts with fake names, posting pornographic images with
 12 Plaintiff’s face superimposed, and “lik[ing]” the posts of other users who threatened him.⁸
 13 Plaintiff asserts that the police joined in this effort by refusing to help him after he was threatened
 14 and by coordinating with Kearney to provide information for Plaintiff’s continued harassment.⁹

15 Plaintiff contends that Kearney’s online conduct, and the online conduct of his followers,
 16 constitutes witness intimidation.¹⁰ Kearney posted articles about Plaintiff shortly before hearings
 17 in Plaintiff’s case against him in Massachusetts Superior Court, said that he would “murder”
 18 Plaintiff “with [his] words” and ruin his life for suing him, harassed an individual who filed an
 19 affidavit in the case, and disclosed to followers Plaintiff’s phone number and address.¹¹ Although
 20 omitted from his Complaint, Plaintiff’s TRO Brief asserts that even the judges who adjudicated a

21 ² Compl. ¶¶ 66, 70.

22 ³ *Id.* ¶¶ 66, 68-69.

23 ⁴ *Id.* ¶ 71.

24 ⁵ *Id.* ¶¶ 11, 75-76, 144.

25 ⁶ *Id.* ¶¶ 77-79.

26 ⁷ *Id.* ¶¶ 17-18, 23-24, 34.

27 ⁸ *Id.* ¶¶ 17, 18, 34, 37, 39, 46-47.

28 ⁹ *Id.* ¶¶ 55-59, 80-83, 123.

¹⁰ *Id.* ¶¶ 34-60.

¹¹ *Id.* ¶¶ 40-41, 43-46, 51, 53.

past suit against Kearney intentionally tolerated Kearney's misconduct.¹² He concluded that it became too dangerous to present evidence in his case, resulting in his summary judgment loss.¹³

B. Plaintiff's Allegations Against Facebook

The Complaint's allegations relating to Facebook are sparse. Indeed, it does little more than allege that third parties posted offensive content on various Facebook pages. Plaintiff does not allege there is any connection between Facebook and Kearney other than that Kearney is a Facebook user. Nor does he allege that anyone at Facebook communicated with Kearney or was in any way involved in Kearney's campaign against him. In fact, Plaintiff admits that Facebook has previously suspended at least three accounts associated with Kearney's blog "Turtleboy Sports"¹⁴ if not more.¹⁵

Instead, Plaintiff alleges that Facebook did not properly enforce its Terms of Service against Kearney and his ever-growing number of accounts, many of which are allegedly set up under fake names.¹⁶ He further alleges that Facebook, to keep users engaged with its platform, uses an algorithm that collects data about its users to match them with content they might find interesting.¹⁷ He claims that this algorithm caused offensive content created by Kearney and others to appear in the news feeds and notifications of Plaintiff's friends and family.¹⁸ Plaintiff does not allege which friends or family members were affected, what posts they saw, when they saw those posts, how they reacted, or how this affected Plaintiff.

Based on these threadbare allegations, Plaintiff asserts six claims against Facebook: witness intimidation in state court under 42 U.S.C. § 1985(2) (Count I); conspiracy to deprive First Amendment rights under 42 U.S.C. § 1985(3) (Count II); violation of civil rights under Article XII of the Massachusetts Declaration of Rights (Count IV); cruel and unusual punishment

¹² TRO Br. at 15.

¹³ Compl. ¶ 92.

¹⁴ *Id.* ¶ 42.

¹⁵ *Id.* ¶ 20.

¹⁶ *Id.* ¶¶ 15-22.

¹⁷ *Id.* ¶ 26.

¹⁸ *Id.* ¶¶ 91, 121.

under 42 U.S.C. § 1983 (Count V); neglect to prevent violation of his rights under 42 U.S.C. § 1986 (Count VI); and intentional infliction of emotional distress (Count IX).

C. Procedural History

On October 26, 2020 Plaintiff filed his verified Complaint against Facebook, Google LLC, Officer Jeremy Haley, Aidan Kearney, Katherine Peter, Springfield Police, Dr. Martha Smith-Blackmore, William Higgins, Massachusetts Attorney General Maura Healey, and Does 1-10. Since filing his Complaint, Plaintiff has twice moved for a temporary restraining order against Facebook and has twice failed to establish his entitlement to this extraordinary relief.¹⁹

In light of Plaintiff's representations that he planned to amend his Complaint, the Court approved a stipulation extending Facebook's time to answer or move to dismiss the Complaint until January 8, 2021. (Dkt. 35.) Plaintiff has yet to file his amended pleadings.

III. ARGUMENT

A. Plaintiff fails to state a claim against Facebook.

To survive a motion to dismiss under Rule 12(b)(6), "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'"²⁰ Dismissal under Rule 12(b)(6) is proper when there is either a "lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory."²¹ In evaluating a complaint's sufficiency, the Court disregards allegations that are "no more than conclusions" or "[t]hreadbare recitals of the elements[.]"²² Here, even accepting as true the allegations in the Complaint,²³ Plaintiff fails to allege facts sufficient to support any of his six causes of action against Facebook.

¹⁹ Dkt. 4; Dkt. 11; Dkt. 17; TRO Opposition. The Court has not yet ruled on Plaintiff's second TRO Motion. As explained in Facebook's TRO Opposition, Plaintiff again fails to establish he is entitled to such extraordinary relief.

²⁰ *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

²¹ *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

²² *Iqbal*, 556 U.S. at 678-79.

²³ *Cook v. Gates*, 528 F.3d 42, 48 (1st Cir. 2008).

1 **1. Plaintiff fails to state a claim against Facebook under federal law.**

2 **a. Plaintiff does not state a claim against Facebook under**
 3 **42 U.S.C. § 1983.**

4 Plaintiff's fifth cause of action is for "eighth amendment violations" raised via Section
 5 1983.²⁴ But Plaintiff cannot bring a Section 1983 claim against Facebook because it is a private
 6 actor. As the First Circuit has held, "[i]f there is no state action, then the court may not impose
 7 constitutional obligations on (and thus restrict the freedom of) private actors."²⁵ Plaintiff
 8 acknowledges Facebook is a business.²⁶ Facebook is a private actor. District courts routinely
 9 dismiss Section 1983 claims brought against Facebook and other internet companies on this basis
 10 alone.²⁷

11 Plaintiff may argue that he can nonetheless bring a Section 1983 claim because private
 12 parties jointly engaged with a state official act under color of law.²⁸ This argument fails. A
 13 plaintiff can bring a constitutional claim against a private actor only if the private actor "assumes
 14 a traditional public function when performing the challenged conduct; or if the challenged
 15 conduct is coerced or significantly encouraged by the state; or if the state has 'so far insinuated
 16 itself into a position of interdependence with the private party that it was a joint participant in the

17 ²⁴ Compl. ¶¶ 116-124.

18 ²⁵ *Yeo v. Town of Lexington*, 131 F. 3d 241, 248-49 (1st Cir. 1997); *see also Santiago v. Puerto Rico*, 655 F.3d 61, 68 (1st Cir. 2011).

19 ²⁶ Compl. ¶ 5-6.

20 ²⁷ *See, e.g., DeLima v. YouTube, LLC*, No. 17-CV-733-PB, 2018 WL 4473551, at *4
 21 (D.N.H. Aug. 30, 2018) ("Defendants are all private companies. DeLima has failed to allege any
 22 state action giving rise to the alleged violations of her First Amendment rights []"), *report and*
 23 *recommendation adopted sub nom. DeLima v. YouTube Inc.*, No. 17-CV-733-PB, 2018 WL
 24 4471721 (D.N.H. Sept. 18, 2018), *aff'd sub nom. Delima v. YouTube, Inc.*, Nos. 18-1666, 18-
 25 1728, 18-1804, 18-1831, 18-1947, 18-2023, 2019 WL 1620756 (1st Cir. Apr. 3, 2019), *cert.*
 26 *denied*, 140 S. Ct. 555 (2019); *Fed. Agency of News LLC v. Facebook, Inc.*, 395 F. Supp. 3d
 27 1295, 1303-04 (N.D. Cal. 2019) ("Facebook is not a state actor, and the First Amendment only
 28 applies to state actors[.]"); *Fehrenbach v. Zeldin*, No. 17-CV-5282 (JFB) (ARL), 2018 WL
 4242452, at *3 (E.D.N.Y. Aug. 6, 2018) (dismissing constitutional claims against Facebook for
 failure to establish that Facebook is a state actor); *Nyabwa v. Facebook*, No. 2:17-CV-24, 2018
 WL 585467, at *1 (S.D. Tex. Jan. 26, 2018) (same); *Shulman v. Facebook.com*, No. 17-764
 (JMV), 2017 WL 5129885, at *4 (D.N.J. Nov. 6, 2017) (same); *Forbes v. Facebook, Inc.*, No. 16
 CV 404 (AMD), 2016 WL 676396 at *2 (E.D.N.Y. Feb. 18, 2016) (declining to hold that
 Facebook's actions could be attributable to state); *Young v. Facebook, Inc.*, No. 5:10-cv-03579-
 JF/PVT, 2010 WL 4269304, at *2 (N.D. Cal. Oct. 25, 2010) (dismissing section 1983 action
 against Facebook for failure to allege "action under color of state law").

²⁸ TRO Br. at 14-16 (citing *Dennis v. Sparks*, 449 U.S. 24 (1980)).

1 challenged activity.”²⁹ The final prong evaluates whether the private actor is “jointly engaged”
 2 with state officials in the challenged conduct.³⁰ Here, Plaintiff alleges no facts to support an
 3 inference that Facebook has assumed a traditional public function, that the state coerced
 4 Facebook’s conduct, or that Facebook and the state are interdependent.³¹ In fact, Plaintiff does
 5 not even allege that Facebook has a connection to any state official, much less that they are
 6 jointly engaged.³² Courts have repeatedly held that Facebook is not jointly involved with state
 7 actors such that it may be subject to constitutional claims.³³ Because Plaintiff fails to allege that
 8 Facebook’s conduct amounts to state action, his Section 1983 claim against it must fail.³⁴

9 **b. Plaintiff does not state a claim against Facebook under 42**
 10 **U.S.C. §§ 1985(2), 1985(3), or 1986.**

11 Plaintiff alleges that Facebook participated in an obstruction and witness intimidation
 12 conspiracy in violation of Section 1985(2), conspired to injure him because he exercised his First
 13 Amendment rights in violation of Section 1985(3), and failed to prevent his injuries in violation
 14 of Section 1986. Plaintiff has not adequately alleged a claim against Facebook under any of these
 15 statutes—which are intended to address conspiracies to engage in violations of civil rights, not
 16 allegedly offensive posts made in an interpersonal dispute.

17 Setting aside whether Plaintiff can establish that some conspiracy existed between
 18 Kearney and some other individuals to deprive him of a protected civil right, Plaintiff’s Section
 19 1985(2) and 1985(3) claims against Facebook fail for the simple reason that his Complaint in no

20 ²⁹ *Santiago*, 655 F.3d at 68-69 (internal brackets omitted) (quoting *Estades-Negroni v. CPC*
 21 *Hosp. San Juan Capestrano*, 412 F.3d 1, 5 (1st Cir. 2005)); see generally *Lugar v. Edmondson*
 22 *Oil Co., Inc.*, 457 U.S. 922, 937 (1982).

23 ³⁰ *Alexis v. McDonald’s Restaurants of Massachusetts, Inc.*, 67 F.3d 341, 351 (1st Cir. 1995)
 (quoting *Dennis*, 449 U.S. at 27-28).

24 ³¹ *Santiago*, 655 F.3d at 68-69.

25 ³² Compl. ¶¶ 116-124.

26 ³³ See, e.g., *Fed. Agency of News*, 395 F. Supp. 3d at 1311-13; *Fehrenbach*, 2018 WL
 27 4242452, at *3; *Young*, 2010 WL 4269304, at *3; *Atkinson v. Facebook, Inc.*, 3:20-CV-05546-
 28 RS, slip op. at 4-8 (N.D. Cal. Dec. 7, 2020).

³⁴ E.g., *Am. Honda Fin. Corp. v. City of Revere*, No. 1:19-CV-10266-ADB, 2020 WL
 3840905, at *3 n.1 (D. Mass. July 8, 2020) (discussing *Nesbitt v. City of Methuen*, No. 17-CV-
 11255-DJC, 2018 WL 3130636, at *2 (D. Mass. June 26, 2018)); see also *King v. Friends of*
Kelly Ayotte, 860 F. Supp. 2d 118, 124-25 (D.N.H. 2012).

way supports an inference that *Facebook* joined any conspiracy. Plaintiff does not allege that Facebook entered into a conspiracy: he does not assert that Facebook agreed to *anything* with Kearney or anyone else. Without alleging that Facebook joined a “conspiratorial agreement,” he cannot state either of his conspiracy claims against it.³⁵

Moreover, Plaintiff fails to allege that Kearney’s campaign against him constitutes the deprivation of civil rights that Section 1985(2) and 1985(3) were designed to prevent. Crucially, Plaintiff fails to allege any racial or class-based, invidiously discriminatory animus motivating the alleged state court interference and deprivation of his First Amendment rights.³⁶ Plaintiff does not allege that Facebook harbored any animus toward him—class-based or otherwise. He only alleges that Kearney discriminated against him “because [he] was arrested, because [he is] intelligent, and because [he] exercised [his] first amendment right making statements showing [his] disapproval of the Ludlow and Palmer police.”³⁷ But this fails to allege class-based, discriminatory animus under Section 1985.³⁸ Rather, Kearney’s animus toward Plaintiff is rooted in his personal distaste for him and his alleged mistreatment of an ex-partner,³⁹ neither of which have anything to do with Facebook.

Section 1986 provides a cause of action against a person who has knowledge of and power to prevent the conspiracies described in Section 1985 but neglects to do so. Because Plaintiff’s claims under section 1985 fail, so too does this claim.⁴⁰ Plaintiff also fails to allege that Facebook knew of any conspiracy it should have sought to prevent. Rather, he asserts only that

³⁵ *O’Rourke v. Hampshire Council of Governments*, 121 F. Supp. 3d 264, 273 (D. Mass. 2015) (citing *Nieves v. McSweeney*, 241 F.3d 46, 53 (1st Cir. 2001)).

³⁶ See *Perez-Sanchez v. Pub. Bldg. Auth.*, 531 F.3d 104, 107-09 (1st Cir. 2008) (citing *Griffin v. Breckenridge*, 403 U.S. 88, 102 (1971)); *Hahn v. Sargent*, 523 F.2d 461, 469 (1st Cir. 1975) (discussing *Griffin*, 403 U.S. at 102).

³⁷ Compl. ¶ 97.

³⁸ See *United Broth. of Carpenters & Joiners of America, Local 610, AFL-CIO v. Scott*, 463 U.S. 825, 837-39 (1983) (holding section 1985(3) does not reach conspiracies rooted in discrimination against union membership); *Aulson v. Blanchard*, 83 F.3d 1, 5-6 (1st Cir. 1996) (a protected classes must be readily determinable via objective criteria); *Perez-Sanchez*, 531 F.3d at 109 (political beliefs not protected under section 1985).

³⁹ Compl. ¶¶ 66-70, 77-79.

⁴⁰ *Maymi v. Puerto Rico Ports Auth.*, 515 F.3d 20, 31 (1st Cir. 2008).

Facebook knew Kearney's profiles violated its Terms of Service and did not remove certain content.⁴¹ This cannot support a claim under Section 1986.

2. The Court lacks subject-matter jurisdiction over Plaintiff's state-law claims—for which he also fails to state claim against Facebook.

In addition to his federal claims, Plaintiff also brings claims against Facebook for (1) violating the Massachusetts constitution and (2) intentional infliction of emotional distress. The Court lacks jurisdiction over these pendant claims, which are also insufficiently pled.

a. The Court lacks subject-matter jurisdiction over Plaintiff's state-law claims against Facebook.

The Court lacks subject-matter jurisdiction over Plaintiff's pendant state-law claims against Facebook because his federal law claims fail.⁴² Moreover, Plaintiff does not invoke this Court's diversity jurisdiction.⁴³ To invoke diversity jurisdiction, Plaintiff must, in objective good-faith,⁴⁴ allege that the amount in controversy exceeds \$75,000.⁴⁵ He bears "the burden of alleging with sufficient particularity facts indicating that it is not a legal certainty that the claim involves less than the jurisdictional amount."⁴⁶ Plaintiff does not allege any amount in controversy, supported by particular facts or otherwise. Accordingly, the Court cannot exercise diversity jurisdiction over the state-law claims.

b. Plaintiff does not state a claim against Facebook under Massachusetts General Law Chapter 12 § 11I.

Even if the Court has subject-matter jurisdiction over these state law claims, they are facially deficient. Plaintiff alleges that Facebook violated his rights under Article XII of the Massachusetts Constitution, which concerns criminal prosecutions, and brings a claim via

⁴¹ Compl. ¶ 127.

⁴² 28 U.S.C. § 1367.

⁴³ 28 U.S.C. § 1332.

⁴⁴ *Abdel-Aleem v. OPK Biotech LLC*, 665 F.3d 38, 42-43 (1st Cir. 2012)

⁴⁵ 28 U.S.C. § 1332(a).

⁴⁶ *Abdel-Aleem*, 665 F.3d at 42 (internal quotation marks and citation omitted); *see also Dep't of Rec. & Sports of Puerto Rico v. World Boxing Ass'n*, 942 F.2d 84, 90 (1st Cir. 1991) (ordering dismissal of complaint for failure to make "specific factual allegations to support the amount in controversy requirement").

Massachusetts General Law chapter 12, section 11I.⁴⁷ To state a claim under Section 11I, a plaintiff must allege that a defendant interfered with a secured right by “threats, intimidation or coercion[.]”⁴⁸ Plaintiff does not allege any facts to support an inference that Facebook threatened, coerced, or intimidated him. Nor does he allege that Facebook “engaged in a joint venture with the goal of interfering with” his rights such that any threats or intimidation can be imputed to it.⁴⁹ Plaintiff’s Section 11I claim fails.

c. Plaintiff does not state a claim against Facebook for intentional infliction of emotional distress.

Plaintiff also fails to state claim against Facebook for intentional infliction of emotional distress.⁵⁰ To state a claim for intentional infliction of emotional distress, a plaintiff must allege “(1) that [defendant] intended, knew, or should have known that his conduct would cause emotional distress; (2) that the conduct was extreme and outrageous; (3) that the conduct caused emotional distress; and (4) that the emotional distress was severe.”⁵¹ Plaintiff does not allege any facts relating to Facebook to support these required elements. He does not allege that Facebook knew—or even should have known—that an algorithm would cause him harm. Nor does he allege explain how any conduct by Facebook is “so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.”⁵² Accordingly, Plaintiff does not state a claim for intentional infliction of emotional distress.

B. Plaintiff’s claims are barred by Section 230(c)(1) of the Communications Decency Act.

Even if Plaintiff had stated a claim under any of his causes of action, his claims are barred under federal law. Plaintiff seeks to bring claims based on content created by other Facebook

⁴⁷ Compl. ¶¶ 112-115.

⁴⁸ Mass. Gen. Laws Ch. 12, §§ 11H, 11I; *see also Bell v. Mazza*, 394 Mass. 176, 182 (1985).

⁴⁹ *Bell*, 394 Mass. at 184.

⁵⁰ Compl. ¶¶ 139-142.

⁵¹ *Polay v. McMahon*, 468 Mass. 379, 385 (2014).

⁵² *Foley v. Polaroid Corp.*, 400 Mass 82, 99 (1987) (quoting Restatement (Second) of Torts § 46 comment d (1965)).

users.⁵³ Section 230(c)(1) of the CDA bars Plaintiff's claims because they seek to hold Facebook liable for the content created by Facebook's users.⁵⁴ CDA immunity is not only a defense to liability, but immunity from suit.⁵⁵ Accordingly, immunity should be determined "at the earliest possible stage[.]"⁵⁶ Plaintiff cannot circumvent this broad immunity under the CDA by artful pleading that attempts to frame his claims in terms of Facebook's actions.⁵⁷

Under Section 230(c)(1) of the CDA, "[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider."⁵⁸ Immunity is construed broadly, recognizing "the 'obvious chilling effect' that such intermediary tort liability could have, given the volume of material communicated through such intermediaries[.]"⁵⁹ "[S]o long as the third party willingly provides the essential published content, the interactive service provider receives full immunity regardless of the specific editing or selection process."⁶⁰

Courts have thus routinely and consistently dismissed at the pleading stage claims such as Plaintiff's, which seek to hold Facebook or other online platform operators liable for allegedly offensive or hurtful content posted by another user.⁶¹

Here, Facebook is entitled to immunity under Section 230(c)(1) because, from the face of

⁵³ See, e.g., Compl. ¶¶ 15-28, 42, 91, 103-104, 121, 127.

⁵⁴ See, e.g., Compl. ¶¶ 15-28, 42, 91, 103-104, 121, 127.

⁵⁵ *Nemet Chevrolet, Ltd. v. Consumer Affairs, Inc.*, 591 F.3d 250, 254 (4th Cir. 2009).

⁵⁶ *Id.* at 255.

⁵⁷ See *Universal Commun. Sys., Inc. v. Lycos, Inc.*, 478 F.3d 413, 418 (1st Cir. 2007)

⁵⁸ 47 U.S.C. § 230(c)(1).

⁵⁹ *Lycos*, 478 F.3d at 418-19 (quoting *Zeran v. Am. Online, Inc.*, 129 F.3d 327, 331 (4th Cir. 1997); see also *Jane Doe No. 1 v. Backpage.com, LLC*, 817 F.3d 12, 19 (1st Cir. 2016).

⁶⁰ *Carafano v. Metrosplash.com, Inc.*, 339 F.3d 1119, 1124 (9th Cir. 2003).

⁶¹ See, e.g., *Riggs v. MySpace, Inc.*, 444 F. App'x 986, 987 (9th Cir. 2011) (motion to dismiss); *Federal Agency of News LLC*, 395 F. Supp. 3d at 1303-04 (same); *Caraccioli v. Facebook, Inc.*, 167 F. Supp. 3d 1056, 1064-66 (N.D. Cal. 2016) (same); *Lancaster v. Alphabet Inc.*, Case No. 15-cv-05299-HSG, 2016 WL 3648608, at * 2-3 (N.D. Cal. July 8, 2016) (same); *Sikhs for Justice "SFJ", Inc. v. Facebook, Inc.*, 144 F. Supp. 3d 1088, 1095-1096 (N.D. Cal. 2015), *affirmed sub nom, Sikhs for Justice, Inc. v. Facebook, Inc.*, 697 F. App'x 526 (9th Cir. 2017) (same); *Obado v. Magedson*, No. 13-2382 (JAP), 2014 WL 3778261, at *7-9 (D.N.J. July 31, 2014), *aff'd*, 612 F. App'x 90 (3d Cir. 2015) (same); *Jurin v. Google, Inc.*, 695 F. Supp. 2d 1117, 1122-23 (E.D. Cal. 2010) (same); *Doe II v. MySpace, Inc.*, 175 Cal. App. 4th 561, 565-568 (2009) (demurrer); *Cross v. Facebook*, 14 Cal. App. 5th 190, 213 (2017) (anti-SLAPP).

the pleadings, it satisfies each of the three requirements for such immunity: (1) it is a provider of an “interactive computer service;” (2) the content at issue was “provided by another information content provider;” and (3) the claims treat Facebook as the “publisher” or “speaker” of that content.⁶²

a. Facebook is an interactive computer service provider.

Facebook satisfies the first requirement for Section 230(c)(1) immunity because it is a provider of interactive computer services. The CDA broadly defines “interactive computer service” as “any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server[.]”⁶³ Courts consistently conclude that Facebook meets this statutory definition.⁶⁴

b. Facebook did not provide the content at issue.

Facebook satisfies the second requirement for Section 230(c)(1) immunity because the content at issue here comes not from Facebook but from Facebook users—specifically, Kearney. Courts routinely hold that Facebook users are “[o]ther information content provider[s]” under the statute.⁶⁵ Here, Plaintiff alleges that Kearney and his followers created all of the posts at issue.⁶⁶ He does not allege that anyone at Facebook authored any of these posts. This satisfies the second requirement.

Plaintiff may attempt to circumvent Section 230(c)(1) by arguing Kearney’s content was “developed in part” by Facebook because some unidentified algorithm resulted in Kearney’s content appearing in the notifications and news feeds of his friends and family.⁶⁷ That argument fails. Courts have repeatedly rejected the argument that an online platform operator somehow

⁶² 47 U.S.C. § 230(c)(1).

⁶³ *Id.* § 230(f)(2).

⁶⁴ *See, e.g., Klayman v. Zuckerberg*, 753 F.3d 1354, 1357-58 (D.C. Cir. 2014); *Cohen v. Facebook, Inc.*, 252 F. Supp. 3d 140, 155-56 (E.D.N.Y. 2017); *Sikhs for Justice*, 144 F. Supp. 3d at 1093.

⁶⁵ *Klayman*, 753 F.3d at 1358-59 (information published by users of Facebook was “information provided by another information content provider” within Section 230(c)(1)); *King v. Facebook, Inc.*, No. 19-CV-01987-WHO, 2019 WL 4221768, at *4 (N.D. Cal. Sept. 5, 2019)

⁶⁶ *See, e.g., Compl.* ¶¶ 14, 37-39, 71, 120.

⁶⁷ *Id.* ¶ 121.

“creates” a user’s content for purposes of Section 230(c)(1) by choosing how or to whom that content is displayed.⁶⁸ For example, in *Force v. Facebook, Inc.*,⁶⁹ the Second Circuit expressly rejected the idea that Facebook’s engagement algorithm transforms Facebook from a platform operator into a co-developer of its users’ content.⁷⁰ The court explained that a defendant does not “develop[]” third-party content unless it “directly and ‘materially’ contributed to what made the content itself ‘unlawful.’”⁷¹ Functions like recommendations and notifications simply facilitate “user-to-user communication”; they do not “develop[]” content.⁷²

c. Plaintiff seeks to hold Facebook liable for exercising “a publisher’s traditional editorial functions.”

Finally, Facebook satisfies the third requirement for Section 230(c)(1) immunity because Plaintiff seeks to hold Facebook liable as a publisher of Kearney’s content. Plaintiff’s theory of liability against Facebook “must be premised on imputing to it the alleged [offensive content], that is, on treating [Facebook] as the publisher of that information.”⁷³ He seeks to hold Facebook accountable for third-party videos and posts that “were published” on Kearney’s Facebook page.⁷⁴ Failure to remove user-generated content satisfies this third prong.⁷⁵

68 *Force v. Facebook*, 934 F.3d 53, 67 (2nd Cir. 2019); *Dyroff v. Ultimate Software Grp.*, 934 F.3d 1093, 1098 (9th Cir. 2019) (recommendations and notifications facilitate communication, but “[t]hey are not content in and of themselves”); *Marshall's Locksmith Serv. Inc. v. Google, LLC*, 925 F.3d 1263, 1271 (D.C. Cir. 2019); *Fed. Agency of News LLC v. Facebook, Inc.*, 432 F. Supp. 3d 1107, 1118-19 (N.D. Cal. 2020); *Pennie v. Twitter, Inc.*, 281 F. Supp. 3d 874, 890 (N.D. Cal. 2017) (rejecting argument that defendants, including Facebook, were liable as creators of content because they allegedly “select advertisements to pair with content on their services”); *Jurin*, 695 F. Supp. 2d at 1123.

⁶⁹ 934 F.3d 53 (2nd Cir. 2019).

⁷⁰ See *id.* at 68-72 (Facebook’s use of an objective algorithm did not “develop,” in whole or in part, postings by its user).

⁷¹ *Id.* at 68 (quoting *FTC v. LeadClick Media, LLC*, 838 F.3d 158, 174 (2nd Cir. 2016)).

⁷² *Dyroff*, 934 F.3d at 1099; *see also Force*, 934 F.3d at 69-70; *Jurin*, 695 F. Supp. 2d at 1123; *Pennie*, 281 F. Supp. 3d at 890.

⁷³ *Lycos*, 478 F.3d at 422.

⁷⁴ Compl. ¶ 48; *see also id.* ¶ 23, 38, 47, 70, 120.

⁷⁵ *E.g., Jane Doe*, 817 F.3d at 18 (“lawsuits seeking to hold a service provider liable for its exercise of a publisher’s traditional editorial functions—such as deciding whether to publish, withdraw, postpone or alter content—are barred”) (citation omitted); *see also Barnes v. Yahoo!, Inc.*, 570 F.3d 1096, 1103 (9th Cir. 2009) (“removing content is something publishers do, and to impose liability on the basis of such conduct necessarily involves treating the liable party as a publisher of the content it failed to remove”).

Facebook cannot be liable for not removing Kearney’s allegedly unlawful content.⁷⁶ It is “well established that notice of the unlawful nature of the information provided is not enough to make it the service provider’s own speech. . . Section 230 immunity applies even after notice of the potentially unlawful nature of the third-party content.”⁷⁷

Plaintiff may try to avoid this straightforward application of the third requirement by arguing, as he did in his TRO Brief, that he does not treat Facebook as a publisher because Facebook’s algorithm resulted in his friends and family seeing Kearney’s content in their news feeds or notifications.⁷⁸ But, as the First Circuit has held, so long as “the cause of action is one that would treat the service provider as the publisher of a particular posting, immunity applies not only for the service provider’s decisions with respect to that posting, but also for its inherent decisions about how to treat postings generally.”⁷⁹ Features “which reflect choices about what content can appear on the website and in what form, are editorial choices that fall within the purview of traditional publisher functions.”⁸⁰ Moreover, to find that “[an] interactive computer service would be ineligible for Section 230(c)(1) immunity by virtue of simply organizing and displaying content exclusively provided by third parties”—an “essential result of publishing”—would “eviscerate Section 230(c)(1)[.]”^{81, 82}

Because all three requirements for Section 230(c)(1) immunity are met, Plaintiff cannot

⁷⁶ Compl. ¶ 71.

⁷⁷ *Lycos*, 478 F.3d at 420 (citations omitted).

⁷⁸ See TRO Br. at 8; see also Compl. ¶ 121.

⁷⁹ *Lycos*, 478 F.3d at 422.

⁸⁰ *Jane Doe*, 817 F.3d at 21; see also *Barnes*, 570 F.3d at 1103 (“removing content is something publishers do, and to impose liability on the basis of such conduct necessarily involves treating the liable party as a publisher of the content it failed to remove”).

⁸¹ *Force*, 934 F.3d at 66.

⁸² Plaintiff may seek to evade this settled precedent by relying on Justice Thomas’s statement regarding the denial of certiorari in *Malwarebytes, Inc. v. Enigma Software Group USA, LLC*, No. 19-1284, 2020 WL 6037214 (U.S. Oct. 13, 2020). That reliance would be misplaced. This statement is not Supreme Court precedent and does not change widely settled law prohibiting claims like the ones Plaintiff brings here. Moreover, the underlying Ninth Circuit opinion interpreted Section 230(c)(2), whereas this case concerns Section 230(c)(1). See *Enigma Software Group USA, LLC v. Malwarebytes, Inc.*, 946 F.3d 1040 (9th Cir. 2019), cert. denied, No. 19-1284, 2020 WL 6037214 (U.S. Oct. 13, 2020). Nor did that case involve claims rooted in a service provider’s failure to remove allegedly unlawful content. *Id.*

bring any of his claims against Facebook.

IV. CONCLUSION

For the foregoing reasons, Facebook respectfully requests that the Court dismiss Plaintiff's claims against it.

Dated: January 8, 2021

KEKER, VAN NEST & PETERS LLP

KEKER VAN NEST & PETERS, LLP
MATAN SHACHAM
Cal Bar # 262348
(Pro Hac Vice Application Pending)
ERICA S. MIRANDA
Cal Bar # 325188
(Pro Hac Vice Application Pending)

By: /s/ Joseph Aronson

KIERNAN, TREBACH LLP
JOSEPH ARONSON (BBO#022070)
jaronson@kiernantrebach.com
40 Court Street, 3rd Floor
Boston, MA 02108
Telephone: 617 426 3900
Facsimile: 617 426 0380

Attorneys for Defendant FACEBOOK
INC.

1 KEKER, VAN NEST & PETERS LLP
MATAN SHACHAM – Cal Bar # 262348
2 mshacham@keker.com
(admitted pro hac vice)
3 ERICA S. MIRANDA – Cal Bar # 325188
emiranda@keker.com
4 (admitted pro hac vice)
633 Battery Street
5 San Francisco, CA 94111-1809
Telephone: 415 391 5400
6 Facsimile: 415 397 7188

7 KIERNAN, TREBACH LLP
JOSEPH ARONSON (BBO#022070)
8 jaronson@kiernantrebach.com
40 Court Street, 3rd Floor
9 Boston, MA 02108
Telephone: 617 426 3900
10 Facsimile: 617 426 0380

11 Attorneys for Defendant FACEBOOK, INC.

12
13 UNITED STATES DISTRICT COURT
14 DISTRICT OF MASSACHUSETTS

15 RIAN WATERS,

16 Plaintiff,

17 v.

18 FACEBOOK INC., GOOGLE LLC.,
OFFICER JEREMY HALEY, AIDAN
19 KEARNEY, KATHERINE PETER,
SPRINGFIELD POLICE, DR. MARTHA
20 SMITH-BLACKMORE, WILLIAM
HIGGINS, MAURA HEALEY, JOHN DOES
21 1-10,

22 Defendant.

Case No. 3:20-CV-30168 MGM

**DEFENDANT FACEBOOK, INC.'S
MOTION TO DISMISS PLAINTIFF'S
FIRST AMENDED COMPLAINT**

Judge: Hon. Mark G. Mastroianni

Date Filed: October 26, 2020

Trial Date: None Set

DEFENDANT FACEBOOK, INC.'S MOTION TO DISMISS PLAINTIFF'S FIRST AMENDED COMPLAINT

Defendant Facebook, Inc. ("Facebook") hereby moves, pursuant to Federal Rule of Civil Procedure 12, to dismiss all claims against Facebook with prejudice. In support of this motion, Facebook states as follows:

1. Facebook has today filed a Memorandum of Points and Authorities in Support of its Motion to Dismiss Plaintiff's First Amended Complaint.
2. A proposed order is attached hereto.

WHEREFORE, Facebook respectfully requests that this Court grant this motion and dismiss all claims against Defendant Facebook, Inc. with prejudice.

Respectfully submitted,

Dated: January 25, 2021

KIERNAN, TREBACH LLP

KEKER VAN NEST & PETERS, LLP
MATAN SHACHAM - Cal Bar # 262348
(admitted pro hac vice)
ERICA S. MIRANDA - Cal Bar # 325188
(admitted pro hac vice)
633 Battery Street
San Francisco, CA 94111-1809
Telephone: 415 391 5400
Facsimile: 415 397 7188

By: /s/ Joseph Aronson
JOSEPH ARONSON (BBO#022070)
jaronson@kiernantrebach.com
40 Court Street, 3rd Floor
Boston, MA 02108
Telephone: 617 426 3900
Facsimile: 617 426 0380

Attorneys for Defendant FACEBOOK,
INC.

**[PROPOSED] ORDER GRANTING DEFENDANT FACEBOOK, INC.'S MOTION TO
DISMISS FIRST AMENDED COMPLAINT**

Whereas this matter has come before the Court pursuant to Defendant Facebook, Inc.'s Motion to Dismiss Plaintiff's First Amended Complaint, and the Court, having considered the motion and any opposition thereto, it is hereby:

ORDERED that Facebook, Inc.'s Motion to Dismiss Plaintiff's First Amended Complaint is GRANTED as to all claims against Facebook, and all claims against Facebook are dismissed with prejudice.

This ____ day of _____, 2021

UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I, Joseph H. Aronson, hereby certify that on January 25, 2021, Defendant Facebook, Inc.'s Motion to Dismiss Plaintiff's First Amended Complaint along with the Memorandum in Support of its motion were filed through the ECF system and were sent electrically to the registered participants as identified on the Notice of Electronic Filing (NEF). A copy of each of the foregoing was served upon Plaintiff Rian Waters by email and by first class mail to Rian Waters, 199 Allen Street, E. Longmeadow, MA 01028.

Dated: January 25, 2021

KIERNAN, TREBACH LLP

By: /s/ Joseph Aronson

KEKER VAN NEST & PETERS, LLP
MATAN SHACHAM - Cal Bar # 262348
(admitted pro hac vice)
ERICA S. MIRANDA - Cal Bar # 325188
(admitted pro hac vice)
633 Battery Street
San Francisco, CA 94111-1809
Telephone: 415 391 5400
Facsimile: 415 397 7188

JOSEPH ARONSON (BBO#022070)
jaronson@kiernantrebach.com
40 Court Street, 3rd Floor
Boston, MA 02108
Telephone: 617 426 3900
Facsimile: 617 426 0380

Attorneys for Defendant FACEBOOK,
INC.

1 KEKER, VAN NEST & PETERS LLP
MATAN SHACHAM – Cal Bar # 262348
2 mshacham@keker.com
(admitted pro hac vice)
3 ERICA S. MIRANDA – Cal Bar # 325188
emiranda@keker.com
4 (admitted pro hac vice)
633 Battery Street
5 San Francisco, CA 94111-1809
Telephone: 415 391 5400
6 Facsimile: 415 397 7188

7 KIERNAN, TREBACH LLP
JOSEPH ARONSON (BBO#022070)
8 jaronson@kiernantrebach.com
40 Court Street, 3rd Floor
9 Boston, MA 02108
Telephone: 617 426 3900
10 Facsimile: 617 426 0380

11 Attorneys for Defendant FACEBOOK, INC.

12 UNITED STATES DISTRICT COURT

13 DISTRICT OF MASSACHUSETTS

14 RIAN WATERS,

15 Plaintiff,

16 v.

17 FACEBOOK INC., GOOGLE LLC.,
OFFICER JEREMY HALEY, AIDAN
18 KEARNEY, KATHERINE PETER,
SPRINGFIELD POLICE, DR. MARTHA
19 SMITH-BLACKMORE, WILLIAM
HIGGINS, MAURA HEALEY, JOHN DOES
20 1-10,

21 Defendant.

Case No. 3:20-CV-30168 MGM

**MEMORANDUM IN SUPPORT OF
DEFENDANT FACEBOOK, INC.'S
MOTION TO DISMISS PLAINTIFF'S
FIRST AMENDED COMPLAINT**

Judge: Hon. Mark G. Mastroianni

Date Filed: October 26, 2020

Trial Date: None Set

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

Page No.

I.	INTRODUCTION	1
II.	FACTUAL ALLEGATIONS AND PROCEDURAL HISTORY	1
A.	Plaintiff’s Allegations Against Kearney	1
B.	Plaintiff’s Allegations Against Facebook	3
C.	Procedural History	4
III.	ARGUMENT	4
A.	Plaintiff fails to state a claim against Facebook.....	4
	1. Plaintiff fails to state a claim against Facebook under federal law.....	5
	2. The Court lacks subject-matter jurisdiction over Plaintiff’s state-law claims—for which he also fails to state claim against Facebook.	10
B.	Plaintiff’s claims are barred by Section 230(c)(1) of the Communications Decency Act.....	15
C.	Granting leave to amend would be futile.....	20
IV.	CONCLUSION.....	20

TABLE OF AUTHORITIES

Page(s)

Federal Cases

<i>Abdel-Aleem v. OPK Biotech LLC</i> , 665 F.3d 38 (1st Cir. 2012).....	10, 11
<i>Alexis v. McDonald’s Restaurants of Massachusetts, Inc.</i> , 67 F.3d 341 (1st Cir. 1995).....	6
<i>Am. Honda Fin. Corp. v. City of Revere</i> , No. 1:19-CV-10266-ADB, 2020 WL 3840905 (D. Mass. July 8, 2020).....	6
<i>Ashcroft v. Iqbal</i> , 556 U.S. 662 (2009).....	4
<i>Atkinson v. Facebook, Inc.</i> , 3:20-CV-05546-RS, slip op. (N.D. Cal. Dec. 7, 2020).....	5, 6
<i>Balistreri v. Pacifica Police Dep’t</i> , 901 F.2d 696 (9th Cir. 1990)	4
<i>Barnes v. Yahoo!, Inc.</i> , 570 F.3d 1096 (9th Cir. 2009)	19, 20
<i>Caraccioli v. Facebook, Inc.</i> , 167 F. Supp. 3d 1056 (N.D. Cal. 2016)	17
<i>Carafano v. Metrosplash.com, Inc.</i> , 339 F.3d 1119 (9th Cir. 2003)	16
<i>Castillo v. SEIU 32BJ New Eng.</i> , No. 20-11220-ADB, 2020 WL 5237698 (D. Mass. Sept. 2, 2020)	13
<i>Cohen v. Facebook, Inc.</i> , 252 F. Supp. 3d 140 (E.D.N.Y. 2017)	17
<i>Cook v. Gates</i> , 528 F.3d 42 (1st Cir. 2008).....	4
<i>Crimson Galeria Limited Partnership v. Healthy Pharms, Inc.</i> , 337 F. Supp. 3d 20 (D. Mass. 2018)	10
<i>Cross v. Facebook</i> , ¹⁴ Cal. App. 5th 190 (2017)	17

1	<i>DeLima v. YouTube, LLC</i> ,	
2	No. 17-CV-733-PB, 2018 WL 4473551 (D.N.H. Aug. 30, 2018), <i>report and</i>	
3	<i>recommendation adopted sub nom. DeLima v. YouTube Inc.</i> , No. 17-CV-733-	
	PB, 2018 WL 4471721 (D.N.H. Sept. 18, 2018).....	5
4	<i>Dep't of Rec. & Sports of Puerto Rico v. World Boxing Assn</i> ,	
5	942 F.2d 84 (1st Cir. 1991).....	11
6	<i>Doe II v. MySpace, Inc.</i> ,	
	175 Cal. App. 4th 561 (2009)	17
7	<i>Doe v. Amherst College</i> ,	
8	238 F. Supp. 3d 195 (D. Mass. 2017)	11
9	<i>Dyroff v. Ultimate Software Grp.</i> ,	
10	934 F.3d 1093 (9th Cir. 2019)	18
11	<i>Enigma Software Group USA, LLC v. Malwarebytes, Inc.</i> ,	
	946 F.3d 1040 (9th Cir. 2019)	20
12	<i>Fed. Agency of News LLC v. Facebook, Inc.</i> ,	
13	395 F. Supp. 3d 1295 (N.D. Cal. 2019)	5, 6, 17
14	<i>Fed. Agency of News LLC v. Facebook, Inc.</i> ,	
15	432 F. Supp. 3d 1107 (N.D. Cal. 2020)	18
16	<i>Fehrenbach v. Zeldin</i> ,	
	No. 17-CV-5282 (JFB) (ARL), 2018 WL 4242452 (E.D.N.Y. Aug. 6, 2018).....	5, 6
17	<i>Flores-Silva v. McClintock-Hernandez</i> ,	
18	710 F.3d 1 (1st Cir. 2013).....	20
19	<i>Forbes v. Facebook, Inc.</i> ,	
20	No. 16 CV 404 (AMD), 2016 WL 676396 (E.D.N.Y. Feb. 18, 2016)	5
21	<i>Force v. Facebook</i> ,	
	934 F.3d 53 (2nd Cir. 2019).....	18, 20
22	<i>Geshke v. Crocs, Inc.</i> ,	
23	889 F. Supp. 2d 253 (D. Mass. 2012)	14
24	<i>Ictech-Bendeck v. Progressive Waste Sols. of LA, Inc.</i> ,	
	367 F. Supp. 3d 555 (E.D. La. 2019).....	12
25	<i>Jane Doe No. 1 v. Backpage.com, LLC</i> ,	
26	817 F.3d 12 (1st Cir. 2016).....	16, 19, 20
27	<i>Jurin v. Google, Inc.</i> ,	
28	695 F. Supp. 2d 1117 (E.D. Cal. 2010).....	17, 18

1	<i>King v. Facebook, Inc.</i> ,	
2	No. 19-CV-01987-WHO, 2019 WL 4221768 (N.D. Cal. Sept. 5, 2019)	18
3	<i>King v. Friends of Kelly Ayotte</i> ,	
4	860 F. Supp. 2d 118 (D.N.H. 2012).....	6
5	<i>Klayman v. Zuckerberg</i> ,	
6	753 F.3d 1354 (D.C. Cir. 2014).....	17, 18
7	<i>Lancaster v. Alphabet Inc.</i> ,	
8	No. 15-cv-05299-HSG, 2016 WL 3648608 (N.D. Cal. July 8, 2016)	17
9	<i>Lugar v. Edmondson Oil Co., Inc.</i> ,	
10	457 U.S. 922 (1982).....	6
11	<i>Lumbermens Mut. Cas. Co. v. Grinnell Corp.</i> ,	
12	477 F. Supp. 2d 327 (D. Mass. 2007)	11
13	<i>Malwarebytes, Inc. v. Enigma Software Group USA, LLC</i> ,	
14	No. 19-1284, 2020 WL 6037214 (U.S. Oct. 13, 2020).....	20
15	<i>Marshall's Locksmith Serv. Inc. v. Google, LLC</i> ,	
16	925 F.3d 1263 (D.C. Cir. 2019).....	18
17	<i>Maymi v. Puerto Rico Ports Auth.</i> ,	
18	515 F.3d 20 (1st Cir. 2008).....	7
19	<i>Nemet Chevrolet, Ltd. v. Consumeraffairs.com, Inc.</i> ,	
20	591 F.3d 250 (4th Cir. 2009)	16
21	<i>Nyabwa v. Facebook</i> ,	
22	No. 2:17-CV-24, 2018 WL 585467 (S.D. Tex. Jan. 26, 2018).....	5
23	<i>O'Neill v. U.S.</i> ,	
24	328 F. Supp. 3d 16 (D. Mass. 2018)	12
25	<i>O'Rourke v. Hampshire Council of Governments</i> ,	
26	121 F. Supp. 3d 264 (D. Mass. 2015)	7
27	<i>Obado v. Magedson</i> ,	
28	No. 13-2382 (JAP), 2014 WL 3778261 (D.N.J. July 31, 2014)	17
	<i>Ocasio-Hernández v. Fortuño-Burset</i> ,	
	640 F.3d 1 (1st Cir. 2011).....	13
	<i>Osorio v. One World Techs., Inc.</i> ,	
	659 F.3d 81 (1st Cir. 2011).....	14
	<i>Pennie v. Twitter, Inc.</i> ,	
	281 F. Supp. 3d 874 (N.D. Cal. 2017)	18

1	<i>Perkins v. F.I.E. Corp.</i> ,	
2	762 F.2d 1250 (5th Cir. 1985)	12
3	<i>Reyes v. Zion First Nat'l Bank</i> ,	
4	No. 10-cv-345, 2012 WL 947139 (E.D. Pa. Mar. 21, 2012)	10
5	<i>Riggs v. MySpace, Inc.</i> ,	
6	444 F. App'x 986 (9th Cir. 2011)	17
7	<i>Santiago v. Puerto Rico</i> ,	
8	655 F.3d 61 (1st Cir. 2011).....	5, 6
9	<i>Shulman v. Facebook.com</i> ,	
10	No. 17-764 (JMV), 2017 WL 5129885 (D.N.J. Nov. 6, 2017).....	5
11	<i>Sikhs for Justice "SFJ", Inc. v. Facebook, Inc.</i> ,	
12	144 F. Supp. 3d 1088 (N.D. Cal. 2015)	17
13	<i>Taupier v. Davol, Inc.</i> ,	
14	3:19-CV-10184-KAR, 2020 WL 5665565 (D. Mass. Sept. 23, 2020).....	14
15	<i>U.S. v. Boylan</i> ,	
16	898 F.2d 230 (1st Cir. 1990).....	9
17	<i>U.S. v. Cianci</i> ,	
18	378 F.3d 71 (1st Cir. 2004).....	7
19	<i>U.S. v. Leoner-Aguirre</i> ,	
20	939 F.3d 310 (1st Cir. 2019).....	8
21	<i>U.S. v. Rodriguez-Torres</i> ,	
22	939 F.3d 16 (1st Cir. 2019).....	8
23	<i>Universal Commun. Sys., Inc. v. Lycos, Inc.</i> ,	
24	478 F.3d 413 (1st Cir. 2007).....	16, 19
25	<i>Weinberg v. Grand Circle Travel, LCC</i> ,	
26	891 F. Supp. 2d 228 (D. Mass. 2012)	11
27	<i>Yeo v. Town of Lexington</i> ,	
28	131 F. 3d 241 (1st Cir. 1997).....	5
	<i>Young v. Facebook, Inc.</i> ,	
	No. 5:10-cv-03579-JF/PVT, 2010 WL 4269304 (N.D. Cal. Oct. 25, 2010)	5, 6
	State Cases	
	<i>Altman v. Aronson</i> ,	
	231 Mass. 588 (1919)	11, 13

1	<i>Bell v. Mazza,</i>	
2	394 Mass. 176 (1985)	15
3	<i>Foley v. Polaroid Corp.,</i>	
4	400 Mass 82 (1987)	16
5	<i>Haglund v. Philip Morris, Inc.,</i>	
6	446 Mass. 741 (2006)	14
7	<i>Jupin v. Kask,</i>	
8	447 Mass. 141 (2006)	11
9	<i>Leavitt v. Brockton Hosp., Inc.,</i>	
10	454 Mass. 37 (2009)	12
11	<i>Polay v. McMahon,</i>	
12	468 Mass. 379 (2014)	15
13	Federal Statutes	
14	18 U.S.C. § 1962(c)	8, 10
15	18 U.S.C. § 1962(d)	3, 7
16	28 U.S.C. § 1332	10
17	28 U.S.C. § 1367	10
18	42 U.S.C. § 1983	3, 5, 6, 20
19	42 U.S.C. § 1986	3, 6, 7, 20
20	Communications Decency Act	<i>passim</i>
21	Racketeer Influenced and Corrupt Organization Act	7, 8, 10, 20
22	State Statutes	
23	Mass. Gen. Laws Ch. 12, § 11H	15
24	Mass. Gen. Laws Ch. 12, § 11I	14, 15, 20
25	Other Authorities	
26	First Amendment	5
27	Eighth Amendment	5
28	Federal Rule of Civil Procedure 8	13

1	Federal Rule of Civil Procedure 12	1, 4
2	Massachusetts Constitution Article XII	3, 10, 15
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

Pursuant to Federal Rule of Civil Procedure 12, Facebook respectfully moves to dismiss the claims against it.

I. INTRODUCTION

On January 11, 2021, *pro se* plaintiff Rian Waters filed his First Amended Complaint (“FAC”).¹ As in his original Complaint, Plaintiff alleges that Defendants Aidan Kearney, Katherine Peter, and others associated with Kearney’s Turtleboy Sports online persona engaged in various acts of wrongdoing against him, including posting hurtful and harassing statements about him on several online forums. And again, Plaintiff attempts to morph this dispute with Kearney into a far-reaching conspiracy involving police officers, his public defender, and even the Massachusetts Attorney General. The details of Plaintiff and Kearney’s personal dispute remain unclear, as Plaintiff does not clarify them in his FAC. Plaintiff may or may not have claims against Kearney and the other individual defendants, but he continues to improperly attempt to drag Facebook into this dispute. He includes only a handful of vague allegations against Facebook to support his prayer for compensatory damages, punitive damages, and unspecified injunctive relief.

Plaintiff’s FAC fails for three reasons: (1) each of his claims is facially deficient; (2) the Court lacks jurisdiction over the state-law claims; and (3) the claims against Facebook are barred by Section 230(c)(1) of the Communications Decency Act (CDA). Indeed, claims such as these, which seek to hold an online platform operator such as Facebook liable for allegedly offensive content posted by another user, are precisely the sort of claims that Section 230(c)(1) of the CDA was intended to bar, and courts around the country have repeatedly and consistently rejected such claims as a result. For these reasons, and as detailed below, the Court should grant Facebook’s Motion to Dismiss and dismiss Plaintiff’s claims against Facebook with prejudice.

II. FACTUAL ALLEGATIONS AND PROCEDURAL HISTORY

A. Plaintiff’s Allegations Against Kearney

Plaintiff’s FAC alleges an ongoing personal dispute with Aidan Kearney dating back to

¹ Dkt. 41.

January 2017, when Kearney posted about Plaintiff’s arrest for alleged animal cruelty and battery.² Plaintiff asserts he was arrested because Samantha Cardin falsely accused him of these crimes to Defendant Officer Jeremy Haley—who then lied about Plaintiff admitting to those crimes and stole \$300 from his pocket.³ As a result of Kearney’s postings, Plaintiff began receiving threats.⁴ Plaintiff’s public defender, Defendant William Higgins, allegedly failed to provide exculpatory evidence to him and his new counsel.⁵ Eventually the charges were dropped, and Plaintiff sued Kearney for libel, slander, and intentional infliction of emotional distress.⁶

According to the FAC, Kearney’s alleged cyber-bullying campaign spanned multiple platforms: Kearney’s blog, Facebook, and YouTube.⁷ Kearney and his followers harassed him using multiple accounts with fake names, posting pornographic images with Plaintiff’s face superimposed, and “lik[ing]” the posts of other users who threatened him.⁸ Plaintiff asserts that the police joined in this effort by refusing to help him after he was threatened and by coordinating with Kearney to provide information for Plaintiff’s continued harassment.⁹

Plaintiff contends that Kearney’s online conduct, and the online conduct of his followers, constitutes witness intimidation.¹⁰ Kearney posted articles about Plaintiff shortly before hearings in Plaintiff’s case against him in Massachusetts Superior Court, said that he would “murder” Plaintiff “with [his] words” and ruin his life for suing him, harassed an individual who filed an affidavit in the case, and disclosed to followers Plaintiff’s phone number and address.¹¹ Although omitted from his FAC, Plaintiff’s TRO Brief asserts that even the judges who adjudicated his past

² FAC ¶¶ 50, 54.

³ *Id.* ¶¶ 50, 52-53.

⁴ *Id.* ¶ 55.

⁵ *Id.* ¶¶ 11, 59-60, 171.

⁶ *Id.* ¶¶ 61-63.

⁷ *Id.* ¶¶ 17-18, 22-23, 31.

⁸ *Id.* ¶¶ 17, 18, 31, 35, 41-42.

⁹ *Id.* ¶¶ 64-68, 164.

¹⁰ *Id.* ¶¶ 31-49.

¹¹ *Id.* ¶¶ 36-37, 39-42, 46, 48.

suit against Kearney intentionally tolerated Kearney's misconduct.¹² He concluded that it became too dangerous to present evidence in his case, resulting in his summary judgment loss.¹³

B. Plaintiff's Allegations Against Facebook

The FAC's allegations relating to Facebook are sparse. Indeed, the FAC does little more than allege that third parties posted offensive content on various Facebook pages, among other platforms. Plaintiff does not allege there is any connection between Facebook and Kearney other than that Kearney is a Facebook user. Nor does he allege that anyone at Facebook communicated with Kearney or was in any way involved in Kearney's campaign against him. In fact, Plaintiff admits that Facebook has previously suspended at least three accounts associated with Kearney's blog "Turtleboy Sports" if not more.¹⁴

Instead, Plaintiff alleges that Facebook did not properly enforce its Terms of Service against Kearney and his ever-growing number of accounts, many of which are allegedly set up under fake names.¹⁵ He further alleges that Facebook, to keep users engaged with its platform, uses an algorithm that collects data about its users to match them with content they might find interesting.¹⁶ He claims that this algorithm caused offensive content created by Kearney and others to appear in the news feeds and notifications of Plaintiff's friends and family.¹⁷ Plaintiff does not allege which friends or family members were affected, what posts they saw, when they saw those posts, how they reacted, or how this affected Plaintiff.

Based on these threadbare allegations, Plaintiff asserts seven claims against Facebook: product design flaw (Count I); gross negligence (Count II); neglect to prevent violation of his rights under 42 U.S.C. § 1986 (Count IV); conspiracy to engage in racketeering activity under 18 U.S.C. § 1962(d) (Count VI); violation of civil rights under Article XII of the Massachusetts Declaration of Rights (Count IX); cruel and unusual punishment under 42 U.S.C. § 1983 (Count

¹² TRO Br. at 15.

¹³ FAC ¶ 76.

¹⁴ *Id.* ¶ 20.

¹⁵ *Id.* ¶¶ 15-21.

¹⁶ *Id.* ¶ 25.

¹⁷ *Id.* ¶¶ 75, 162.

X); and intentional infliction of emotional distress (Count XI).

C. Procedural History

On October 26, 2020 Plaintiff filed his verified Complaint against Facebook, Google LLC, Officer Jeremy Haley, Aidan Kearney, Katherine Peter, Springfield Police, Dr. Martha Smith-Blackmore, William Higgins, Massachusetts Attorney General Maura Healey, and Does 1-10. Since filing his Complaint, Plaintiff has twice moved for a temporary restraining order against Facebook.¹⁸ The Court rejected his first attempt and has not yet ruled on the second.¹⁹

In light of Plaintiff's representations that he planned to amend his Complaint, the Court approved a stipulation extending Facebook's time to answer or move to dismiss the Complaint until January 8, 2021.²⁰ On January 8, 2021, Facebook moved to dismiss Plaintiff's Complaint, as he had yet to file his amended pleadings.²¹ Plaintiff filed his FAC on January 11, 2021.

III. ARGUMENT

A. Plaintiff fails to state a claim against Facebook.

To survive a Rule 12(b)(6) motion to dismiss, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'"²² Dismissal is proper when there is either a "lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory."²³ In evaluating a complaint's sufficiency, the Court disregards allegations that are "no more than conclusions" or "[t]hreadbare recitals of the elements[.]"²⁴ Here, even accepting as true the allegations in the FAC,²⁵ Plaintiff fails to allege facts sufficient to support any of his seven causes of action against Facebook.

¹⁸ Dkt. 4; Dkt. 17.

¹⁹ Dkt. 11; TRO Opposition.

²⁰ Dkt. 35.

²¹ Dkt. 37.

²² *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

²³ *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

²⁴ *Iqbal*, 556 U.S. at 678-79.

²⁵ *Cook v. Gates*, 528 F.3d 42, 48 (1st Cir. 2008).

1 **1. Plaintiff fails to state a claim against Facebook under federal law.**

2 **a. Plaintiff does not state a claim against Facebook under**
 3 **42 U.S.C. § 1983.**

4 Plaintiff alleges “eighth amendment violations” against Facebook, raised via Section
 5 1983.²⁶ But he cannot bring a Section 1983 claim against Facebook because it is a private actor.
 6 As the First Circuit has held, “[i]f there is no state action, then the court may not impose
 7 constitutional obligations on (and thus restrict the freedom of) private actors.”²⁷ Plaintiff
 8 acknowledges Facebook is a business.²⁸ Facebook is a private actor. District courts routinely
 9 dismiss Section 1983 claims brought against Facebook and other internet companies on this basis
 10 alone.²⁹

11 Plaintiff may argue that he can nonetheless bring a Section 1983 claim because private
 12 parties jointly engaged with a state official act under color of law.³⁰ This argument fails. A
 13 plaintiff can bring a constitutional claim against a private actor only if the private actor “assumes
 14 a traditional public function when performing the challenged conduct; or if the challenged
 15 conduct is coerced or significantly encouraged by the state; or if the state has ‘so far insinuated

16 ²⁶ FAC. ¶¶ 157-165.

17 ²⁷ *Yeo v. Town of Lexington*, 131 F. 3d 241, 248-49 (1st Cir. 1997); *see also Santiago v. Puerto Rico*, 655 F.3d 61, 68 (1st Cir. 2011).

18 ²⁸ FAC ¶ 5.

19 ²⁹ *See, e.g., DeLima v. YouTube, LLC*, No. 17-CV-733-PB, 2018 WL 4473551, at *4 (D.N.H. Aug. 30, 2018) (“Defendants are all private companies. DeLima has failed to allege any state action giving rise to the alleged violations of her First Amendment rights [.]”), *report and recommendation adopted sub nom. DeLima v. YouTube Inc.*, No. 17-CV-733-PB, 2018 WL 4471721 (D.N.H. Sept. 18, 2018), *aff’d sub nom. Delima v. YouTube, Inc.*, Nos. 18-1666, 18-1728, 18-1804, 18-1831, 18-1947, 18-2023, 2019 WL 1620756 (1st Cir. 2019), *cert. denied*, 140 S. Ct. 555 (2019); *Atkinson v. Facebook, Inc.*, 3:20-CV-05546-RS, slip op. at 4-5 (N.D. Cal. Dec. 7, 2020); *Fed. Agency of News LLC v. Facebook, Inc.*, 395 F. Supp. 3d 1295, 1303-04 (N.D. Cal. 2019) (“Facebook is not a state actor, and the First Amendment only applies to state actors[.]”); *Fehrenbach v. Zeldin*, No. 17-CV-5282 (JFB) (ARL), 2018 WL 4242452, at *3 (E.D.N.Y. Aug. 6, 2018) (dismissing constitutional claims against Facebook for failure to establish that Facebook is a state actor); *Nyabwa v. Facebook*, No. 2:17-CV-24, 2018 WL 585467, at *1 (S.D. Tex. Jan. 26, 2018) (same); *Shulman v. Facebook.com*, No. 17-764 (JMV), 2017 WL 5129885, at *4 (D.N.J. Nov. 6, 2017) (same); *Forbes v. Facebook, Inc.*, No. 16 CV 404 (AMD), 2016 WL 676396 at *2 (E.D.N.Y. Feb. 18, 2016) (declining to hold that Facebook’s actions could be attributable to state); *Young v. Facebook, Inc.*, No. 5:10-cv-03579-JF/PVT, 2010 WL 4269304, at *2 (N.D. Cal. Oct. 25, 2010) (dismissing section 1983 action against Facebook for failure to allege “action under color of state law”).

28 ³⁰ TRO Br. at 14-16 (citing *Dennis v. Sparks*, 449 U.S. 24 (1980)).

1 itself into a position of interdependence with the private party that it was a joint participant in the
 2 challenged activity.”³¹ The final prong evaluates whether the private actor is “jointly engaged”
 3 with state officials in the challenged conduct.³² Here, Plaintiff alleges no facts to support an
 4 inference that Facebook has assumed a traditional public function, that the state coerced
 5 Facebook’s conduct, or that Facebook and the state are interdependent.³³ In fact, Plaintiff does
 6 not even allege that Facebook has a connection to any state official, much less that they are
 7 jointly engaged.³⁴ Courts have repeatedly held that Facebook is not jointly involved with state
 8 actors such that it may be subject to constitutional claims.³⁵ Because Plaintiff fails to allege that
 9 Facebook’s conduct amounts to state action, his Section 1983 claim against it must fail.³⁶

10 **b. Plaintiff does not state a claim against Facebook under 42**
 11 **U.S.C. § 1986.**

12 Plaintiff alleges that Facebook, in violation of Section 1986, failed to prevent an alleged
 13 conspiracy between Kearney and Google to interfere with this federal case.³⁷ Plaintiff fails to
 14 allege a claim against Facebook under this statute, which provides a cause of action against a
 15 person who has knowledge of and power to prevent the conspiracies described in Section 1985
 16 but neglects to do so. The underlying conspiracy Plaintiff attempts to allege is a conspiracy to
 17 interfere with a federal court proceeding, violating Section 1985(2).³⁸ But Plaintiff does not
 18 plausibly allege any underlying conspiracy, as he fails to allege that Kearney and Google entered

19 ³¹ *Santiago*, 655 F.3d at 68-69 (internal brackets omitted) (quoting *Estades–Negroni v. CPC*
 20 *Hosp. San Juan Capestrano*, 412 F.3d 1, 5 (1st Cir. 2005)); *see generally Lugar v. Edmondson*
 21 *Oil Co., Inc.*, 457 U.S. 922, 937 (1982).

22 ³² *Alexis v. McDonald’s Restaurants of Massachusetts, Inc.*, 67 F.3d 341, 351 (1st Cir. 1995)
 23 (quoting *Dennis*, 449 U.S. at 27-28).

24 ³³ *Santiago*, 655 F.3d at 68-69.

25 ³⁴ FAC ¶¶ 157-165.

26 ³⁵ *See, e.g., Fed. Agency of News*, 395 F. Supp. 3d at 1311-13; *Fehrenbach*, 2018 WL
 27 4242452, at *3; *Young*, 2010 WL 4269304, at *3; *Atkinson v. Facebook, Inc.*, 3:20-CV-05546-
 28 RS, slip op. at 4-8 (N.D. Cal. Dec. 7, 2020).

³⁶ *E.g., Am. Honda Fin. Corp. v. City of Revere*, No. 1:19-CV-10266-ADB, 2020 WL
 3840905, at *3 n.1 (D. Mass. July 8, 2020) (discussing *Nesbitt v. City of Methuen*, No. 17-CV-
 11255-DJC, 2018 WL 3130636, at *2 (D. Mass. June 26, 2018)); *see also King v. Friends of*
Kelly Ayotte, 860 F. Supp. 2d 118, 124-25 (D.N.H. 2012).

³⁷ FAC ¶¶ 110-117.

³⁸ *Id.* ¶¶ 101-109.

1 into a conspiratorial agreement to interfere with this litigation. Without alleging a conspiratorial
 2 agreement, Plaintiff cannot state a claim for an underlying conspiracy,³⁹ and the Section 1986
 3 claim against Facebook must fail.⁴⁰

4 Even if Plaintiff had plausibly alleged a conspiracy between Kearney and Google, he still
 5 does not state a claim against Facebook under Section 1986. Plaintiff fails to allege that
 6 Facebook knew of any conspiracy it should have sought to prevent. Rather, he asserts only that
 7 Facebook knew Kearney's profiles violated Facebook's Terms of Service and did not remove
 8 certain content.⁴¹ This cannot support a claim under Section 1986. Moreover, Plaintiff does not
 9 allege that Facebook had power to prevent any supposed conspiracy between Kearney and
 10 Google. Nor could he: Kearney's videos with the "obstructing material" are hosted on YouTube,
 11 a platform operated by Google.⁴²

12 **c. Plaintiff does not state a claim under 18 U.S.C. § 1962(d).**

13 Plaintiff alleges that Facebook conspired to violate the Racketeer Influenced and Corrupt
 14 Organization Act ("RICO").⁴³ This claim also fails. To state a claim for conspiracy to violate
 15 RICO, a plaintiff must plausibly allege that a defendant "intend[s] to further an endeavor which,
 16 if completed, would satisfy all of the elements of a substantive criminal offense, but it suffices
 17 that [it] adopt the goal of furthering or facilitating the criminal endeavor."⁴⁴ Put differently, a
 18 plaintiff must allege that the defendant "'knew about and agreed to facilitate' a substantive RICO
 19 violation."⁴⁵ To allege a conspiracy to violate Section 1962(c)—the only substantive RICO

21 ³⁹ *O'Rourke v. Hampshire Council of Governments*, 121 F. Supp. 3d 264, 273 (D. Mass.
 2015) (citing *Nieves v. McSweeney*, 241 F.3d 46, 53 (1st Cir. 2001)).

22 ⁴⁰ *Maymi v. Puerto Rico Ports Auth.*, 515 F.3d 20, 31 (1st Cir. 2008).

23 ⁴¹ FAC ¶ 113.

24 ⁴² *Id.* ¶¶ 6, 102-106.

25 ⁴³ *Id.* ¶¶ 136-142.

26 ⁴⁴ *U.S. v. Cianci*, 378 F.3d 71, 90 (1st Cir. 2004) (quoting *Salinas v. U.S.*, 522 U.S. 52, 65
 (1997)).

27 ⁴⁵ *U.S. v. Leoner-Aguirre*, 939 F.3d 310, 316 (1st Cir. 2019) (quoting *Salinas*, 522 U.S. at
 28 66); *U.S. v. Rodriguez-Torres*, 939 F.3d 16, 30 (1st Cir. 2019) (to establish the "knowingly
 joined" element of a RICO conspiracy requires "'that the defendant agreed with one or more
 coconspirators to participate in the conspiracy.'").

1 offense in the FAC—a plaintiff must allege “the defendant knew about and agreed to facilitate
2 ‘the conduct of [an] enterprise’s affairs through a pattern of racketeering activity.’”⁴⁶

3 Plaintiff fails to plausibly allege that Facebook knew about and agreed to facilitate any
4 supposed pattern of racketeering by the alleged enterprise comprised of Aidan Kearney,
5 Katherine Peter, Worcter Digital Marketing LLC, and Turtleboy Enterprises LLC.⁴⁷ Plaintiff
6 does not allege any facts establishing such knowledge. Rather, the only allegations concerning
7 Facebook’s knowledge of substantive RICO violations are conclusory assertions devoid of any
8 factual support:

- 9 • “The Count I Defendant(s) agreed to and did conduct and participate in the conduct of
10 the enterprise’s affairs through a pattern of racketeering activity and for the unlawful
11 purpose of obstructing justice and intentionally harming the Plaintiff’s business and
12 property.”⁴⁸
- 13 • “Google and Facebook . . . were legally made aware of the features and general aims
14 of the scheme, and that by distribution they were participating in the racketeering
15 activity, yet they continued to facilitate the scheme and actively participate by
16 distributing the illegal content based on behavioral analysis for advertising profit.”⁴⁹
- 17 • “Facebook knew or should have known that Aidan Kearney was using dozens of fake
18 profiles to harass people with, but nonetheless permitted them to harass me.”⁵⁰

19 But Plaintiff fails to allege how Facebook knew about any purported scheme to engage in
20 a pattern of *racketeering activity*.⁵¹ He supplies no facts to explain how Facebook could know
21 that Kearney’s alleged harassment was intended to intimidate witnesses or retaliate against
22 individuals reporting crimes to law enforcement. Plaintiff provides no explanation as to how
23 Facebook could have known about Kearney’s alleged goal to intimidate witnesses—especially
24 witnesses like co-defendant Katherine Peter, a member of the supposed enterprise. Nor does he

24 ⁴⁶ *Leoner-Aguirre*, 939 F.3d at 316 (quoting 18 U.S.C. § 1962(c)).

25 ⁴⁷ FAC ¶¶ 119-121.

26 ⁴⁸ *Id.* ¶ 124.

27 ⁴⁹ *Id.* ¶ 137.

28 ⁵⁰ *Id.* ¶ 139.

⁵¹ *See Leoner-Aguirre*, 939 F.3d at 316.

1 explain how Facebook could have known that Kearney intended to use his personal blog to
 2 retaliate against individuals for providing information to law enforcement. The simple fact that
 3 Kearney uses fake profiles to post offensive content—even if that content is reported as
 4 offensive—does not support an inference that Facebook knew of Kearney’s alleged pattern of
 5 racketeering activity.⁵² It is implausible that Facebook would be able to divine whether each
 6 reported post across its worldwide platform is part of some nefarious scheme.

7 Moreover, Plaintiff fails to plausibly allege that Facebook agreed to anything with the
 8 alleged conspirators. Plaintiff does not allege any connection between Facebook and Kearney
 9 other than that Kearney is a Facebook user. Nor does he allege that anyone at Facebook ever
 10 communicated with Kearney, any member of the alleged enterprise, or alleged coconspirator
 11 Google. Thus, not only does Plaintiff fail to allege the express facts of any conspiratorial
 12 agreement, he also fails to allege facts that “its existence can plausibly be inferred from the
 13 defendants’ words and actions and the interdependence of activities and persons involved.”⁵³

14 Additionally, Plaintiff also fails to allege that Facebook intended to facilitate Kearney’s
 15 wrongful conduct. His conclusory assertion that Facebook “facilitate[d] the scheme and actively
 16 participate[d] by distributing the illegal content based on behavioral analysis for advertising
 17 profit”⁵⁴ is belied by the rest of the FAC. Plaintiff alleges that Facebook uses an algorithm that
 18 collects data about its users to match them with content they might find interesting.⁵⁵ He claims
 19 that this algorithm caused offensive content created by Kearney and others to appear in the news
 20 feeds and notifications of his friends and family.⁵⁶ But none of this suggests that Facebook
 21 *intended* to facilitate any wrongdoing. Further, Plaintiff explains that Facebook has previously
 22 suspended at least three accounts associated with Kearney’s blog “Turtleboy Sports.”⁵⁷ These
 23 allegations contradict his conclusory assertion that Facebook somehow intended to facilitate the

24 ⁵² See FAC ¶¶ 126-132.

25 ⁵³ *U.S. v. Boylan*, 898 F.2d 230, 241–42 (1st Cir. 1990).

26 ⁵⁴ FAC ¶ 137.

27 ⁵⁵ *Id.* ¶ 25.

28 ⁵⁶ *Id.* ¶¶ 75, 162.

⁵⁷ *Id.* ¶ 20, 38.

1 alleged predicate offenses.⁵⁸ Accordingly, Plaintiff cannot allege that Facebook knew of, agreed
2 to, or intended to facilitate any racketeering activity.

3 **2. The Court lacks subject-matter jurisdiction over Plaintiff's state-law**
4 **claims—for which he also fails to state claim against Facebook.**

5 In addition to his federal claims, Plaintiff also brings claims against Facebook for (1)
6 product design flaw; (2) gross negligence; (3) violating the Massachusetts constitution; and (4)
7 intentional infliction of emotional distress. The Court lacks jurisdiction over these pendant
8 claims, which are also insufficiently pled.

9 **a. The Court lacks subject-matter jurisdiction over Plaintiff's**
10 **state-law claims against Facebook.**

11 The Court lacks subject-matter jurisdiction over Plaintiff's pendant state-law claims
12 against Facebook because his federal law claims fail.⁵⁹ Moreover, Plaintiff does not invoke this
13 Court's diversity jurisdiction.⁶⁰ To invoke diversity jurisdiction, Plaintiff must, in objective
14 good-faith,⁶¹ allege that the amount in controversy exceeds \$75,000.⁶² He bears "the burden of
15 alleging with sufficient particularity facts indicating that it is not a legal certainty that the claim
16 involves less than the jurisdictional amount."⁶³ Plaintiff does not allege any amount in
17 controversy, supported by particular facts or otherwise. Accordingly, the Court cannot exercise
18 diversity jurisdiction over the state-law claims.

18 ⁵⁸ See, e.g., *Crimson Galeria Limited Partnership v. Healthy Pharms, Inc.*, 337 F. Supp. 3d
19 20, 43 (D. Mass. 2018) ("Plaintiffs have not adequately shown that providing ordinary banking
20 services to marijuana-related businesses, in compliance with Treasury Department guidance
21 aimed at enabling banks to provide such services, sufficiently demonstrates that it joined and
22 intended to further a RICO conspiracy."); *Reyes v. Zion First Nat'l Bank*, No. 10-cv-345, 2012
23 WL 947139, at *6 (E.D. Pa. Mar. 21, 2012) ("Where a defendant is alleged to have conspired
24 with a RICO enterprise to violate § 1962(c) by providing it what would ordinarily be lawful
25 professional services, liability will arise only from services which were purposefully and
26 knowingly directed at facilitating a criminal pattern of racketeering activity." (internal quotations
27 omitted)).

23 ⁵⁹ 28 U.S.C. § 1367.

24 ⁶⁰ 28 U.S.C. § 1332.

25 ⁶¹ *Abdel-Aleem v. OPK Biotech LLC*, 665 F.3d 38, 42-43 (1st Cir. 2012)

26 ⁶² 28 U.S.C. § 1332(a).

27 ⁶³ *Abdel-Aleem*, 665 F.3d at 42 (internal quotation marks and citation omitted); see also
28 *Dep't of Rec. & Sports of Puerto Rico v. World Boxing Assn*, 942 F.2d 84, 90 (1st Cir. 1991)
(ordering dismissal of complaint for failure to make "specific factual allegations to support the
amount in controversy requirement").

b. Plaintiff does not state a claim against Facebook for gross negligence.

Even if the court has subject-matter jurisdiction over these state law claims, they, too, are facially deficient. Plaintiff alleges Facebook was grossly negligent, resulting in his physical pain, mental anguish, and diminished enjoyment of life.⁶⁴ “Gross negligence” is a negligence cause of action with a higher level of culpability.⁶⁵ To state a claim for negligence, a plaintiff must allege “that the defendant owed the plaintiff a duty of reasonable care, that the defendant breached this duty, that damage resulted, and that there was a causal relation between the breach of the duty and the damage.”⁶⁶ Gross negligence is “substantially and appreciably higher in magnitude than ordinary negligence.”⁶⁷ It is characterized by “the want of even scant care.”⁶⁸ Plaintiff fails to sufficiently allege (1) that Facebook owes him a duty of care; (2) that Facebook breached that duty of care; or (3) that his injuries were proximately caused by any supposed breach.

Plaintiff alleges no facts to establish duty. Instead, he includes a conclusory allegation that Facebook owes him a duty of care under “*sic utere tuo ut alienum non laedas*,”⁶⁹ which translates to “use your own property in such a manner as not to injure that of another.”⁷⁰ The *sic utere* doctrine establishes “limitations on the scope and extent of the right of ownership in immovable (real) property[.]”⁷¹ and this case does not concern Facebook’s use of its real property. Plaintiff does not allege that Facebook has a duty to prevent harmful conduct from third parties. Under Massachusetts law, “[a]bsent a special relationship with a person posing a risk, there is no duty to

⁶⁴ FAC ¶¶ 94-100.

⁶⁵ *Weinberg v. Grand Circle Travel, LCC*, 891 F. Supp. 2d 228, 251 (D. Mass. 2012) (citing *Matsuyama v. Birnbaum*, 452 Mass. 1, 36 (2008)).

⁶⁶ *Jupin v. Kask*, 447 Mass. 141, 146 (2006); *see also Doe v. Amherst College*, 238 F. Supp. 3d 195, 227–28 (D. Mass. 2017) (citing *Saldivar v. Racine*, 818 F.3d 14, 20–21 (1st Cir. 2016)).

⁶⁷ *Altman v. Aronson*, 231 Mass. 588, 591–92 (1919).

⁶⁸ *Lumbermens Mut. Cas. Co. v. Grinnell Corp.*, 477 F. Supp. 2d 327, 334 (D. Mass. 2007) (quoting *Altman*, 231 Mass. at 591–92.)

⁶⁹ FAC ¶ 100.

⁷⁰ *See, e.g., Ictech-Bendeck v. Progressive Waste Sols. of LA, Inc.*, 367 F. Supp. 3d 555, 566 (E.D. La. 2019).

⁷¹ *Perkins v. F.I.E. Corp.*, 762 F.2d 1250, 1255 (5th Cir. 1985).

1 control another person’s conduct to prevent that person from causing harm to a third party[.]”⁷²
 2 For example, a defendant may owe a duty of reasonable care when she has a parent-child, master-
 3 servant, or possessor-licensee relationship with the person who injures a plaintiff, or otherwise
 4 “takes charge” of a person she knows is likely to cause harm if not controlled.⁷³ Plaintiff seeks to
 5 hold Facebook liable for the harassment by other users, but fails to allege the existence of any
 6 special relationship. He therefore fails to allege that Facebook owed him a duty.

7 Plaintiff also does not plausibly allege that Facebook breached that duty to satisfy even
 8 the ordinary negligence standard. In fact, he does not allege how Facebook’s conduct fell below
 9 a reasonable standard of care.⁷⁴ Instead, Plaintiff acknowledges that Facebook suspended
 10 numerous accounts associated with Kearney.⁷⁵ Plaintiff also fails to even acknowledge the
 11 heightened culpability standard required for gross negligence claims, much less plead facts
 12 sufficient to meet this heightened standard. He alleges only that his injuries would have been
 13 avoided if Facebook had taken “reasonable care[.]”⁷⁶ Plaintiff therefore fails to allege, even in a
 14 conclusory fashion, the defining element of his gross negligence claim. And Facebook’s repeated
 15 suspension of Kearney’s accounts precludes an inference of a lack of “even scant care.”⁷⁷

16 These facts further undermine Plaintiff’s conclusory assertion that Facebook conduct was
 17 the proximate cause of his unspecified injuries.⁷⁸ Kearney created the offensive content, and
 18 Kearney posted it on various online forums: his blog, Facebook, and YouTube.⁷⁹ Plaintiff also
 19 acknowledges that Facebook has reviewed and suspended many pages associated with Kearney.⁸⁰

21 ⁷² *Leavitt v. Brockton Hosp., Inc.*, 454 Mass. 37, 40–41 (2009).

22 ⁷³ *O’Neill v. U.S.*, 328 F. Supp. 3d 16, 23-24 (D. Mass. 2018), *aff’d sub nom. Romano v. U.S.*, 774 Fed. Appx. 7 (1st Cir. 2019) (unpublished) (citing *McCloskey v. Mueller*, 446 F.3d 262, 268 (1st Cir. 2006)).

23 ⁷⁴ *See* FAC ¶¶ 94–100.

24 ⁷⁵ *Id.* ¶¶ 20, 38.

25 ⁷⁶ *Id.* ¶ 97.

26 ⁷⁷ *Altman*, 231 Mass. at 591–92.

27 ⁷⁸ FAC ¶ 99.

28 ⁷⁹ *Id.* ¶¶ 17-18, 22-23, 31.

⁸⁰ *Id.* ¶¶ 20, 38.

He further explains that even without a Facebook presence, “Kearney will still be able to communicate his views using his websites and traditional media[.]”⁸¹ Thus, Plaintiff fails to state a claim for gross negligence.

c. Plaintiff does not state a claim against Facebook for “product design flaw.”

Plaintiff alleges a claim against Facebook for “product design flaw.”⁸² This claim fails to satisfy the pleading requirements of Federal Rule of Civil Procedure 8(a)(2), which requires “a short and plain statement of the claim showing that the pleader is entitled to relief.” This requires that a plaintiff provide “sufficient detail . . . to give a defendant fair notice of the claim and the grounds upon which it rests.”⁸³ But Plaintiff does not identify the legal basis for his “product design flaw” claim—which does not exist in Massachusetts statutory or common law. This alone is sufficient basis to dismiss the claim as currently plead.⁸⁴

To the extent Plaintiff is seeking to assert some sort of products liability claim, the theory is unclear. He asserts Facebook’s platform is defectively designed and unreasonably dangerous because it does not ensure that all instances of what he believes to be witness intimidation are reported and prevented.⁸⁵ It appears that he attributes this to an alleged failure verify each user’s actual identity and does not undertake to determine the true identity of a user who commits a crime.⁸⁶ He asserts that Facebook could moderate its platform with a safer alternative moderation design.⁸⁷ Plaintiff appears to be conflating various products liability claims, potentially negligent design and implied warranty liability.⁸⁸ His muddled allegations miss the mark on both.

⁸¹ TRO Br. at 17.

⁸² FAC ¶¶ 79-93.

⁸³ *Ocasio-Hernández v. Fortuño-Burset*, 640 F.3d 1, 8 (1st Cir. 2011).

⁸⁴ *See, e.g., Castillo v. SEIU 32BJ New Eng.*, No. 20-11220-ADB, 2020 WL 5237698, at *2 (D. Mass. Sept. 2, 2020).

⁸⁵ FAC ¶ 84.

⁸⁶ *Id.* ¶ 85.

⁸⁷ *Id.* ¶ 90.

⁸⁸ *Geshke v. Crocs, Inc.*, 889 F. Supp. 2d 253, 261, 64 (D. Mass. 2012), *aff’d*, 740 F.3d 74 (1st Cir. 2014) (using “safer alternative design” to discuss negligent design and “unreasonably dangerous product” to discuss breach of implied warranty)).

1 First, warranty liability for defective design cannot be premised on Facebook’s conduct.⁸⁹
 2 But that’s exactly what Plaintiff does here. His allegations focus on Facebook’s conduct, what it
 3 supposedly knew, and how it allegedly failed to reasonably moderate user disputes.⁹⁰
 4 Second, to state a claim for negligent design, a plaintiff must allege (1) failure to exercise a
 5 reasonable degree of care under the circumstances; (2) proximate causation; and (3) injury.⁹¹
 6 Negligent design claims broadly consider whether a defendant has “‘failed to use reasonable care
 7 to eliminate foreseeable dangers which subject a user to an unreasonable risk of injury.’”⁹² But
 8 Plaintiff does not even allege what the negligent moderation practices—to the extent they even
 9 constitute “design” features—were or how they breach the standard of care. Instead, he proposes
 10 a “[s]afer alternative” moderation practice he prefers,⁹³ failing to allege the necessary element of
 11 failure to use reasonable care.⁹⁴ He does not, and his allegations suggest Facebook’s moderation
 12 practices are reasonable. Its moderation practices have resulted in Facebook suspending at least
 13 three pages associated with Kearney for the content of posts written about Plaintiff.⁹⁵ Finally,
 14 Plaintiff fails to allege any facts to support his single, conclusory allegation of cause.⁹⁶ Thus,
 15 Plaintiff’s “product design flaw” claim fails.

16 **d. Plaintiff does not state a claim against Facebook under**
 17 **Massachusetts General Law Chapter 12 § 11I.**

18 Plaintiff alleges that Facebook violated his rights under Article XII of the Massachusetts
 19 Constitution, which concerns criminal prosecutions, and brings a claim via Massachusetts
 20

21 ⁸⁹ See *Haglund v. Philip Morris, Inc.*, 446 Mass. 741, 747 n.9 (2006) (citing *Colter v.*
 22 *Barber-Greene Co.*, 403 Mass. 50, 61–62 (1988)).

23 ⁹⁰ FAC ¶¶ 80, 82–85.

24 ⁹¹ *Taupier v. Davol, Inc.*, 3:19-CV-10184-KAR, 2020 WL 5665565, *9 (D. Mass. Sept. 23,
 25 2020) (citing *Geshke*, 889 F. Supp. 2d at 261).

26 ⁹² *Haglund*, 446 Mass. at 747 n.9 (quoting *Colter*, 403 Mass. at 61).

27 ⁹³ FAC ¶ 89.

28 ⁹⁴ See *Osorio v. One World Techs., Inc.*, 659 F.3d 81, 86–87 (1st Cir. 2011) (a plaintiff may
 prevail in a design defect in the absence establishing a feasible alternative design)).

⁹⁵ FAC ¶¶ 20, 38.

⁹⁶ *Id.* ¶ 92.

General Law chapter 12, section 11I.⁹⁷ To state a claim under Section 11I, a plaintiff must allege that a defendant interfered with a secured right by “threats, intimidation or coercion[.]”⁹⁸ Plaintiff does not allege any facts to support an inference that Facebook threatened, coerced, or intimidated him. Nor does he allege that Facebook “engaged in a joint venture with the goal of interfering with” his rights such that any threats or intimidation can be imputed to it.⁹⁹ Plaintiff’s Section 11I claim fails.

e. Plaintiff does not state a claim against Facebook for intentional infliction of emotional distress.

Plaintiff also fails to state claim against Facebook for intentional infliction of emotional distress.¹⁰⁰ To state a claim for intentional infliction of emotional distress, a plaintiff must allege “(1) that [defendant] intended, knew, or should have known that his conduct would cause emotional distress; (2) that the conduct was extreme and outrageous; (3) that the conduct caused emotional distress; and (4) that the emotional distress was severe.”¹⁰¹ Plaintiff does not allege any facts relating to Facebook to support these required elements. He does not allege that Facebook knew—or even should have known—that an algorithm would cause him harm. Nor does he allege explain how any conduct by Facebook is “so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.”¹⁰² Accordingly, Plaintiff does not state a claim for intentional infliction of emotional distress.

B. Plaintiff’s claims are barred by Section 230(c)(1) of the Communications Decency Act.

Even if Plaintiff had stated a claim under any of his causes of action, his claims are barred under federal law. Section 230(c)(1) of the CDA bars Plaintiff’s claims because they seek to hold

⁹⁷ *Id.* ¶¶ 153-156.

⁹⁸ Mass. Gen. Laws Ch. 12, §§ 11H, 11I; *see also Bell v. Mazza*, 394 Mass. 176, 182 (1985).

⁹⁹ *Bell*, 394 Mass. at 184.

¹⁰⁰ FAC ¶¶ 166-169.

¹⁰¹ *Polay v. McMahon*, 468 Mass. 379, 385 (2014).

¹⁰² *Foley v. Polaroid Corp.*, 400 Mass 82, 99 (1987) (quoting Restatement (Second) of Torts § 46 comment d (1965)).

Facebook liable for the content created by Facebook’s users.¹⁰³ CDA immunity is not only a defense to liability, but immunity from suit.¹⁰⁴ Accordingly, immunity should be determined “at the earliest possible stage[.]”¹⁰⁵ Plaintiff cannot circumvent this broad immunity under the CDA by artful pleading that attempts to frame his claims in terms of Facebook’s actions.¹⁰⁶

Under Section 230(c)(1) of the CDA, “[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.”¹⁰⁷ Immunity is construed broadly, recognizing “the ‘obvious chilling effect’ that such intermediary tort liability could have, given the volume of material communicated through such intermediaries[.]”¹⁰⁸ “[S]o long as a third party willingly provides the essential published content, the interactive service provider receives full immunity regardless of the specific editing or selection process.”¹⁰⁹

Courts have thus routinely and consistently dismissed at the pleading stage claims such as Plaintiff’s, which seek to hold Facebook or other online platform operators liable for allegedly offensive or hurtful content posted by another user.¹¹⁰

Here, Facebook is entitled to immunity under Section 230(c)(1) because, from the face of the pleadings, it satisfies each of the three requirements for such immunity: (1) it is a provider of

¹⁰³ See, e.g., FAC ¶¶ 15-26, 38, 75, 80, 84-85, 111, 113, 128, 137, 162.

¹⁰⁴ *Nemet Chevrolet, Ltd. v. Consumeraffairs.com, Inc.*, 591 F.3d 250, 254 (4th Cir. 2009).

¹⁰⁵ *Id.* at 255.

¹⁰⁶ See *Universal Commun. Sys., Inc. v. Lycos, Inc.*, 478 F.3d 413, 418 (1st Cir. 2007)

¹⁰⁷ 47 U.S.C. § 230(c)(1).

¹⁰⁸ *Lycos*, 478 F.3d at 418–19 (quoting *Zeran v. Am. Online, Inc.*, 129 F.3d 327, 331 (4th Cir. 1997); see also *Jane Doe No. 1 v. Backpage.com, LLC*, 817 F.3d 12, 19 (1st Cir. 2016).

¹⁰⁹ *Carafano v. Metrosplash.com, Inc.*, 339 F.3d 1119, 1124 (9th Cir. 2003).

¹¹⁰ See, e.g., *Riggs v. MySpace, Inc.*, 444 F. App’x 986, 987 (9th Cir. 2011) (motion to dismiss); *Federal Agency of News LLC*, 395 F. Supp. 3d at 1303-04 (same); *Caraccioli v. Facebook, Inc.*, 167 F. Supp. 3d 1056, 1064-66 (N.D. Cal. 2016) (same); *Lancaster v. Alphabet Inc.*, Case No. 15-cv-05299-HSG, 2016 WL 3648608, at * 2-3 (N.D. Cal. July 8, 2016) (same); *Sikhs for Justice “SFJ”, Inc. v. Facebook, Inc.*, 144 F. Supp. 3d 1088, 1095-1096 (N.D. Cal. 2015), *affirmed sub nom, Sikhs for Justice, Inc. v. Facebook, Inc.*, 697 F. App’x 526 (9th Cir. 2017) (same); *Obado v. Magedson*, No. 13-2382 (JAP), 2014 WL 3778261, at *7-9 (D.N.J. July 31, 2014), *aff’d*, 612 F. App’x 90 (3d Cir. 2015) (same); *Jurin v. Google, Inc.*, 695 F. Supp. 2d 1117, 1122–23 (E.D. Cal. 2010) (same); *Doe II v. MySpace, Inc.*, 175 Cal. App. 4th 561, 565-568 (2009) (demurrer); *Cross v. Facebook*, 14 Cal. App. 5th 190, 213 (2017) (anti-SLAPP).

an “interactive computer service;” (2) the content at issue was “provided by another information content provider;” and (3) the claims treat Facebook as the “publisher” or “speaker” of that content.¹¹¹

a. Facebook is an interactive computer service provider.

Facebook satisfies the first requirement for Section 230(c)(1) immunity because it is a provider of interactive computer services. The CDA broadly defines “interactive computer service” as “any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server[.]”¹¹² Courts consistently conclude that Facebook meets this statutory definition.¹¹³

b. Facebook did not provide the content at issue.

Facebook satisfies the second requirement for Section 230(c)(1) immunity because the content at issue here comes not from Facebook but from Facebook users—specifically, Kearney. Courts routinely hold that Facebook users are “[o]ther information content provider[s]” under the statute.¹¹⁴ Here, Plaintiff alleges that Kearney and his followers created all of the posts at issue.¹¹⁵ He does not allege that anyone at Facebook authored any of these posts. This satisfies the second requirement.

Plaintiff may attempt to circumvent Section 230(c)(1) by arguing Kearney’s content was “developed in part” by Facebook because some unidentified algorithm resulted in Kearney’s content appearing in the notifications and news feeds of his friends and family.¹¹⁶ That argument fails. Courts have repeatedly rejected the argument that an online platform operator somehow “creates” a user’s content for purposes of Section 230(c)(1) by choosing how or to whom that

¹¹¹ 47 U.S.C. § 230(c)(1).

¹¹² *Id.* § 230(f)(2).

¹¹³ *See, e.g., Klayman v. Zuckerberg*, 753 F.3d 1354, 1357-58 (D.C. Cir. 2014); *Cohen v. Facebook, Inc.*, 252 F. Supp. 3d 140, 155-56 (E.D.N.Y. 2017); *Sikhs for Justice*, 144 F. Supp. 3d at 1093.

¹¹⁴ *Klayman*, 753 F.3d at 1358-59 (information published by users of Facebook was “information provided by another information content provider” within Section 230(c)(1)); *King v. Facebook, Inc.*, No. 19-CV-01987-WHO, 2019 WL 4221768, at *4 (N.D. Cal. Sept. 5, 2019)

¹¹⁵ *See, e.g., FAC* ¶¶ 14, 34-35, 55, 161.

¹¹⁶ *Id.* ¶ 162.

content is displayed.¹¹⁷ For example, in *Force v. Facebook, Inc.*, the Second Circuit expressly rejected the idea that Facebook’s engagement algorithm transforms Facebook from a platform operator into a co-developer of its users’ content.¹¹⁸ The court explained that a defendant does not “develop[]” third-party content unless it “directly and ‘materially’ contributed to what made the content itself ‘unlawful.’”¹¹⁹ Functions like recommendations and notifications simply facilitate “user-to-user communication”; they do not “develop[]” content.¹²⁰

c. Plaintiff seeks to hold Facebook liable for exercising “a publisher’s traditional editorial functions.”

Finally, Facebook satisfies the third requirement for Section 230(c)(1) immunity because Plaintiff seeks to hold Facebook liable as a publisher of Kearney’s content. Plaintiff’s theory of liability against Facebook “must be premised on imputing to it the alleged [offensive content], that is, on treating [Facebook] as the publisher of that information.”¹²¹ He seeks to hold Facebook accountable for third-party videos and posts that “were published” on Kearney’s Facebook page.¹²² Failure to remove user-generated content satisfies this third prong.¹²³

Facebook cannot be liable for not removing Kearney’s allegedly unlawful content.¹²⁴ It is

¹¹⁷ *Force v. Facebook*, 934 F.3d 53, 67 (2nd Cir. 2019); *Dyroff v. Ultimate Software Grp.*, 934 F.3d 1093, 1098 (9th Cir. 2019) (recommendations and notifications facilitate communication, but “[t]hey are not content in and of themselves”); *Marshall’s Locksmith Serv. Inc. v. Google, LLC*, 925 F.3d 1263, 1271 (D.C. Cir. 2019); *Fed. Agency of News LLC v. Facebook, Inc.*, 432 F. Supp. 3d 1107, 1118-19 (N.D. Cal. 2020); *Pennie v. Twitter, Inc.*, 281 F. Supp. 3d 874, 890 (N.D. Cal. 2017) (rejecting argument that defendants, including Facebook, were liable as creators of content because they allegedly “select advertisements to pair with content on their services”); *Jurin*, 695 F. Supp. 2d at 1123.

¹¹⁸ 934 F.3d at 68-72 (Facebook’s use of an objective algorithm did not “develop,” in whole or in part, postings by its user).

¹¹⁹ *Id.* at 68 (quoting *FTC v. LeadClick Media, LLC*, 838 F.3d 158, 174 (2nd Cir. 2016)).

¹²⁰ *Dyroff*, 934 F.3d at 1099; *see also Force*, 934 F.3d at 69-70; *Jurin*, 695 F. Supp. 2d at 1123; *Pennie*, 281 F. Supp. 3d at 890.

¹²¹ *Lycos*, 478 F.3d at 422.

¹²² FAC ¶ 44; *see also id.* ¶ 23, 34, 43, 54, 161.

¹²³ *E.g., Jane Doe*, 817 F.3d at 18 (“lawsuits seeking to hold a service provider liable for its exercise of a publisher’s traditional editorial functions—such as deciding whether to publish, withdraw, postpone or alter content—are barred”) (citation omitted); *see also Barnes v. Yahoo!, Inc.*, 570 F.3d 1096, 1103 (9th Cir. 2009) (“removing content is something publishers do, and to impose liability on the basis of such conduct necessarily involves treating the liable party as a publisher of the content it failed to remove”).

¹²⁴ *See, e.g., FAC* ¶¶ 26, 128.

1 “well established that notice of the unlawful nature of the information provided is not enough to
2 make it the service provider’s own speech. . . Section 230 immunity applies even after notice of
3 the potentially unlawful nature of the third-party content.”¹²⁵

4 Plaintiff may try to avoid this straightforward application of the third requirement by
5 arguing, as he did in his TRO Brief, that he does not treat Facebook as a publisher because some
6 unidentified Facebook algorithm resulted in his friends and family seeing Kearney’s content in
7 their news feeds or notifications.¹²⁶ But, as the First Circuit has held, so long as “the cause of
8 action is one that would treat the service provider as the publisher of a particular posting,
9 immunity applies not only for the service provider’s decisions with respect to that posting, but
10 also for its inherent decisions about how to treat postings generally.”¹²⁷ Features “which reflect
11 choices about what content can appear on the website and in what form, are editorial choices that
12 fall within the purview of traditional publisher functions.”¹²⁸ Moreover, to find that “[an]
13 interactive computer service would be ineligible for Section 230(c)(1) immunity by virtue of
14 simply organizing and displaying content exclusively provided by third parties”—an “essential
15 result of publishing”—would “eviscerate Section 230(c)(1)[.]”^{129, 130}

16 Because all three requirements for Section 230(c)(1) immunity are met, Plaintiff cannot
17 bring any of his claims against Facebook.

18
19 ¹²⁵ *Lycos*, 478 F.3d at 420 (citations omitted).

20 ¹²⁶ See TRO Br. at 8; see also FAC ¶ 162.

21 ¹²⁷ *Lycos*, 478 F.3d at 422.

22 ¹²⁸ *Jane Doe*, 817 F.3d at 21; see also *Barnes*, 570 F.3d at 1103 (“removing content is
something publishers do, and to impose liability on the basis of such conduct necessarily involves
treating the liable party as a publisher of the content it failed to remove”).

23 ¹²⁹ *Force*, 934 F.3d at 66.

24 ¹³⁰ Plaintiff may seek to evade this settled precedent by relying on Justice Thomas’s
statement regarding the denial of certiorari in *Malwarebytes, Inc. v. Enigma Software Group*
25 *USA, LLC*, No. 19-1284, 2020 WL 6037214 (U.S. Oct. 13, 2020). That reliance would be
misplaced. This statement is not Supreme Court precedent and does not change widely settled
26 law prohibiting claims like the ones Plaintiff brings here. Moreover, the underlying Ninth Circuit
opinion interpreted Section 230(c)(2), whereas this case concerns Section 230(c)(1). See *Enigma*
27 *Software Group USA, LLC v. Malwarebytes, Inc.*, 946 F.3d 1040 (9th Cir. 2019), cert.
denied, No. 19-1284, 2020 WL 6037214 (U.S. Oct. 13, 2020). Nor did that case involve claims
28 rooted in a service provider’s failure to remove allegedly unlawful content. *Id.*

C. Granting leave to amend would be futile.

The Court need not grant Plaintiff leave to amend his FAC if it would be futile.¹³¹ And it would be futile here. Plaintiff has demonstrated he cannot state any claim against Facebook. Facebook raised many of the arguments above in its TRO Opposition and again in its MTD Brief. But the FAC does not even attempt to fix the deficiencies in his original complaint. He adds no new factual allegations. He still relies on a terms of service violation to support his claim under 42 U.S.C. § 1986.¹³² He still fails to allege that Facebook knowingly joined any conspiracy—although this time he tries to allege a RICO conspiracy.¹³³ He left unchanged his claims for civil rights violations under 42 U.S.C. § 1983 and Massachusetts General Law Chapter 12, section 11I, as well as his claim for intentional infliction of emotional distress. Plaintiff added claims for “product design flaw” and gross negligence, but those, too, fail. If Plaintiff could allege actionable facts against Facebook, he would have done so already. Furthermore, he simply cannot overcome Facebook’s CDA immunity. Further amendment cannot solve these problems, and the Court should dismiss the FAC against Facebook without leave to amend.

IV. CONCLUSION

For the foregoing reasons, Facebook respectfully requests that the Court dismiss Plaintiff’s claims against it, without leave to amend and with prejudice.

Dated: January 25, 2021

KEKER, VAN NEST & PETERS LLP

By: /s/ Joseph Aronson

KEKER VAN NEST & PETERS, LLP
MATAN SHACHAM - Cal Bar # 262348
(admitted pro hac vice)
ERICA S. MIRANDA - Cal Bar # 325188
(admitted pro hac vice)
633 Battery Street
San Francisco, CA 94111-1809
Telephone: 415 391 5400
Facsimile: 415 397 7188

KIERNAN, TREBACH LLP
JOSEPH ARONSON (BBO#022070)
jaronson@kiernantrebach.com
40 Court Street, 3rd Floor
Boston, MA 02108
Telephone: 617 426 3900
Facsimile: 617 426 0380

Attorneys for Defendant FACEBOOK, INC.

¹³¹ *Flores-Silva v. McClintock-Hernandez*, 710 F.3d 1, 4 (1st Cir. 2013).

¹³² FAC ¶ 113.

¹³³ *Id.* ¶¶ 136-142.

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

RIAN WATERS,
Plaintiff

FACEBOOK INC., et al.,
Defendants

)
)
)
)
)
)
)

3:2020CV30168 - MGM

Opposition to Facebook’s and temporarily Google’s motion to Dismiss

The reason it took so long for me to amend the complaint, and the reason the amended complaint was poorly written without much change was not because the case did not have merit, but because the threats and other obstructive conduct critically impaired me. The Defendant’s received legal notice from the Verified Complaint (“VC”) that Aidan Kearney’s harassment on their platforms had in the past caused me to have adjustment disorder (VC 88) and that the Adjustment disorder impaired my ability to argue (VC 91,92, and 94) the Defendants also received legal notice that Aidan Kearney had bragged about weaponizing their platforms and consistently used it to harass me and people that helped me in any way (VC 34-39, 51, 102-104)

Had the Defendants prevented obstruction on their platforms that was directly related to this case, I would have been able to copy their writing style and provided

strong arguments against all of the Defendants. As of 7:30 pm on 2/12/21 I still have not read Maura Healey's or either of Google's motions to dismiss. The Proposed Amended Complaint ("PAC") which will be filed early next week will remove all Defendant's besides Aidan Kearney, Google LLC, Facebook INC., and Katherine Peter. The reason I am dropping the other defendants is not because I do not have good claims, but because the adjustment disorder is impairing me and they are not actively harming me.

The PAC will add;

- A. A list of co-conspirators (some state agents) who will not be added as parties for the RICO, and 42 USC 1985 claims. With Screen shots showing their involvement
- B. Allegations for a conspiratorial agreement,
- C. Allegations listing dates and details of when I legally made Facebook and Google aware through their attorneys that Aidan Kearney was using their platforms to violate 42 USC 1985/ RICO (although it is notable that my complaint being verified should be more than enough to survive the motion to dismiss.)
- D. An allegation invoking diversity jurisdiction listing an amount in controversy in the seven figures, with supporting facts.

E. Rename the product design flaw claim as an implied warranty of merchantability claim, cite the Defendants' TOS, show their current designs, and show screenshot of their competitors much safer designs. I will also show that social media experts, industry leaders, and world leaders all agree that Facebook's design in particular is destroying democracy and the planet.

Shortly after I file the PAC I will also file a motion to consolidate the Preliminary injunction with the trial on the merits as I will submit adequate evidence for most if not all claims pursuant to Rule 65(a)(2).

Applying 47 U.S.C. § 230 to this case would be unconstitutional.

The first paragraph of FAC was heavily influenced by a speech from a senator from the 42nd congress in 1871 stating the outrageousness of the then current affairs. I used it to show that the Defendants' actions and the current condition of affairs are exactly the objects that the Klu Klux Klan act was designed to prevent. If section 230 of the CDA makes it that the state and tech companies can routinely violate civil rights with impunity, then Section 230 is either unconstitutional on it's face, or as applied. "I hold it to be always constitutional to prevent the Government and the administration of its laws from being destroyed or seriously impaired. Salus populi est suprenirx lex is a part of the constitution of every Government." THE CONGRESSIONAL GLOBE pg 501 (1871) Frederick T. Frelinghuysen "But the

fourteenth amendment prohibits any State from abridging the privileges or immunities of the citizens of the United States, whether its own citizens or any others. It not merely requires equality of privileges, but it demands that the privileges and immunities of all citizens shall be absolutely unabridged, unimpaired." Id. Pg 500 "It need not be said that a law is of little account without the cooperation of the two other departments; for it must be interpreted and applied by the judicial, and carried into execution by the executive department. Without power of execution it is a mere dead letter. Therefore it is obvious that when a State is required by the Constitution to do this, or abstain from that, it means not the legislative branch of the State simply, but all the departments of the State government combined-all are necessary to create and enforce a law." Id. 506 Pratt

Political Discrimination

Facebook's algorithms favor far-right political content like Aidan Kearney's, and when confronted with this fact, a Facebook executive is quoted as suggesting the left could push more far-left content. This is discrimination against moderates and independents, and Facebook's competitors state that the reason the don't use algorithms like Facebook's because they are too toxic. While much of Aidan Kearney's blog attacks "Social Justice Warriors" almost all of Aidan Kearney's attacks have a political agenda. I tried to steer clear of alleging that I was discriminated for political reasons as I was aware that the courts have not allowed

recovery for that purpose. But, after reading the arguments from several of the then congressman I realized that political discrimination is exactly what the act was made to prevent. “The committee assert that the testimony almost without exception establishes that the outrages were perpetrated by the bands of Ku Klux in disguise, and were inflicted upon the members of the *Republican party, both white and colored*; in some instances, *the fact that they were of that party being given as the reason* of the punishment; in others, alleged crime being the pretext... Ku Kluk Klan, is composed wholly and exclusively of Democrats or Conservatives, which, I suppose, means the same thing.” “I observe that whatever palliation there may have been in the past for these outrages upon their former enemies, or because of *political differences*” “How often has it been said to be a myth. How often has the country been told that the reports with which the newspapers teemed of outrages in the South upon the *Republicans* was a cunning scheme, devised for political effect” Id. Pg 503

Daniel D. Pratt “What follows in section one of this article, by way of limitation upon the power of the States, applies equally to both races, so that when a State is forbidden to make or enforce any law abridging the privileges of citizens of the United States, and when it is forbidden to deprive any person of life, liberty, or properly without due process of law, and is prohibited from denying to any person within its jurisdiction the equal. protection of the laws, we are to understand these prohibitions as extending to *all* persons who are made citizens by the first clause of

the article, whether Caucasian, African, or Asiatic in origin. There is no *torturing of language* by which we can strike out the word "all" in this article. If protection is guarantied to the African, it is also to the Chinaman if naturalized; and what warrant have we to claim that the whites alone are excluded?" Id. Pg 506 Daniel D. Pratt emphasis added "The murders and outrages committed at Meridian, Mississippi, where twenty eight negroes and two white men were killed *because of their political opinions*, are perfectly appalling." Id. pg 511 Legrand W. Perce More congressman can be cited later.

State Action

Facebook states "courts have repeatedly held that Facebook is not jointly involved with state actors such that it may be subject to constitutional claims." This argument fails, the cases they cited were not in the first circuit, and even if they were, 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). Additionally, none of the cases that I could find from Facebook's MTD involved Police officers and state agents providing information to a public shaming blog, and

none of them had police officers engaging in harassment on their platforms. Aidan Kearney sent and received emails with multiple state agents discussing the criminal allegations against me (VC 68-70), and on 9/24/2020 Aidan Kearney stated while being interviewed that he has police in every department who send him stories, and he noted that his close relationship with law enforcement is a primary reason for his success. Aidan Kearney frequently targets people who detract from law enforcement credibility, and law enforcement has charged several people with crimes at Aidan Kearney's request, yet law enforcement has routinely refused to hold Aidan Kearney liable for his criminal actions. "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)

Inaccuracies in Facebook's Background:

The only claim against the Mass. AG. is a declaratory claim suing her in her capacity under M.G.L. c. 12, § 3 so that she could defend the right of Police Officer's to use public shaming in Massachusetts. No conspiracy claim was brought against the public defender, or Jim Dalton. Additionally, the CDA was not written with the intent to disincentive content moderation and make enforcement of Federal laws dealing with harassment by computer unenforceable. Courts have also not

consistently ruled that the CDA bars my claims, and no court has ever ruled that the CDA bars a 42 USC 1986 claim.

Even if the court rules section 230 constitutional, it should not apply.

The Courts are not honoring congresses objectives by providing broad immunity. Facebook's moderation designs have regressed and minimized user control. The courts are not supposed to choose one goal over another. The CDA's goals were;

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

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

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

(4) to *remove disincentives* for the development and utilization of blocking and filtering technologies that empower parents to restrict their children's access to objectionable or inappropriate online material; and

(5) to ensure vigorous enforcement of Federal criminal laws to *deter and punish* trafficking in obscenity, stalking, and *harassment* by means of computer. 47 U.S.C. § 230

“We have consistently eschewed an expansive reading of the statute that would render unlawful conduct "magically ... lawful when [conducted] online," and therefore "giv[ing] online businesses an unfair advantage over their real-world counterparts." *See Roommates.com* , 521 F.3d at 1164, 1164–65 n.15.” *Homeaway.Com, Inc. v. City of Santa Monica*, 918 F.3d 676, 683 (9th Cir. 2019) “Having considered the relevant First and Ninth Circuit decisions, this Court perceives no material differences in how the two Courts of Appeals interpret the CDA... the ‘ultimate question’ regarding whether a cause of action treats a defendant as the publisher of third-party content” *Airbnb, Inc. v. City of Boston*, 386 F. Supp. 3d 113, 120 n.5 (D. Mass. 2019)

“In the First Circuit, § 230 of the CDA "shields conduct if": "(1) [the defendant] is a provider or user of an interactive computer service; (2) the claim is based on information provided by another information content provider; and (3) the claim would treat [the defendant] as the publisher or speaker of that information." *Jane Doe*, 817 F.3d at 19 (quotation marks omitted; latter alteration in original); *see HomeAway.com*, 918 F.3d at 681 (reflecting Ninth Circuit's applies a nearly

identical three-pronged analysis)... The Court's focus, then, is on the final prong of the analysis: whether the fine described in the Penalties provision treats [Facebook and Google] "as the publisher or speaker of" the information contained in its rental listings. This assessment 'depends on whether the [theory of liability] necessarily requires that the [website operator] be treated as the publisher or speaker of content provided by another.'" Airbnb, Inc. v. City of Boston, 386 F. Supp. 3d 113, 119 (D. Mass. 2019) quoting Jane Doe, 817 F.3d at 19 ; accord HomeAway.com, 918 F.3d at 682 ; Airbnb, 217 F. Supp. 3d at 1074.

If an individual uses an ordinary search engine to query for a "white roommate," the search engine has not contributed to any alleged unlawfulness in the individual's conduct; providing *neutral* tools to carry out what may be unlawful or illicit searches does not amount to "development" for purposes of the immunity exception. Fair v. Roommates, 521 F.3d 1157, 1169 (9th Cir. 2008) (emphasis original) But Facebook's algorithms do favor extremists' content, and their product design is intentionally deficient for moderation to maximize ad revenue.

Product Design Liability/ warranty of merchantability

Facebook alleges that because they showed a want or scant care in January 2019 and had a reasonable product design then, that they do not need to have a reasonable product design in 2020, or 2021. I see this as proving a clear example

that their business could have a reasonable design that shows a want or scant care, but that they have chosen not to for a financial incentive. Broad immunity has disincentivized development into a race to the bottom. Facebook’s competitor’s MeWe and Parler both allow users to provide context to rule violations. Another platform Twitch has the best design, and their costs of moderation is significantly less per a user. The CEO says that one reason their moderation costs are low is because they have a transparent moderation process with consistent punishments paired to violations, which does not give bad actors any room to guess and see what they can get away with.

42 USC 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 42 U.S.C. § 1986 “All parties, whether represented by attorneys or not, are obligated to proceed in good faith, to ‘act with reasonable diligence to bring their litigation to a final conclusion,’ and to conduct themselves with at least that modicum of civility, courtesy and respect, for both the court and other parties, that simple common decency and common sense dictate.” *Reznik v. Friswell*, 2003

Mass. App. Div. 42, 44 (Mass. Dist. Ct. App. 2003) quoting *Bucchiere v. New England Tel. Tel. Co.*, 396 Mass. 639, 642 (1986)

Facebook and Google were legally made aware “Each party is deemed bound by the acts of his lawyer-agent and is considered to have ‘*notice of all facts*, notice of which can be charged upon the attorney.’” *Link v. Wabash Railroad Co.*, 370 U.S. 626, 634-33 (1962) see also *Smith v. Ayer*, 101 U.S. 320, 325-26 (1879)

The ninth circuit “held that where the website provider was alleged to have known independently of the ongoing scheme beforehand, the CDA did not bar an action under state law for failure to warn. *Id.* at 854. We observed that a duty to warn would not “otherwise affect how [the defendant] publishes or monitors user content... 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) quotations omitted (We do not read *Internet Brands* to suggest that CDA immunity attaches any time a legal duty might lead a company to respond with monitoring or other publication activities. It is not enough that third-party content is involved; *Internet Brands* rejected use of a “but-for” test that would provide immunity under the CDA solely because a cause of action would not otherwise have accrued but for the third-party

content. *Id.* at 853. We look instead to what the duty at issue actually requires: specifically, whether the duty would necessarily require an internet company to monitor third-party content.) *"Even assuming that monitoring and removing certain [posts] may be [Facebook's] most practical compliance option, allowing internet companies to claim CDA immunity under these circumstances would risk exempting them from [all laws and] ... create a lawless no-man's-land on the Internet."* *Airbnb, Inc. v. City of Boston*, 386 F. Supp. 3d 113, 122 (D. Mass. 2019)

Facebook and Google could have informed the police, they could have limited how their algorithms treat Aidan Kearney's posts, and they could have warned other users.

All men 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. Article I of the Mass Declaration of Rights I ran out of time.

Respectfully submitted by:

Pro Se Rian Waters  2/12/2021
199 Allen ST. E. Longmeadow MA 01028
watersrian@gmail.com (530) 739-8951

Certificate Of Service

I, Rian Waters, hereby certify that on February 12th 2021, I served my opposition to Facebook's motion to dismiss on Facebook, Google, Aidan Kearney, Maura Healey, and Jim Dalton by emailing:

andrew.batchelor@state.ma.us, jaronson@kiernantrebach.com, lbk@rose-law.net, adr@rose-law.net, emiranda@keker.com, MShacham@keker.com, ryan@mclanelaw.com

The listed Defendants all agreed to accept email service.

Subscribed under the penalties of perjury.

Dated February 18th 2021



**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

RIAN WATERS,
Plaintiff

FACEBOOK INC., et al.,
Defendants

3:2020CV30168 - MGM

PLAINTIFF’S MOTON FOR ORDER UNDER LOCAL RULE 83.2.2
GOVERNING EXTRAJUDICIAL STATEMENTS

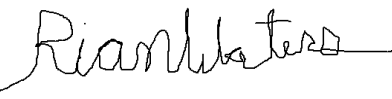
I Rian Waters, move for this court to grant an order under local rule 83.2.2 governing extrajudicial statements by parties and witnesses, and or consider the attached memorandum and affidavit, and oppositions to Google's, Facebook's, and Aidan Kearney's motions to dismiss with my motion for a preliminary injunction.

Alternatively, I move for this court to appoint counsel under local rule 14.4(4) to assist with making discovery requests, review pleadings to look for deficiencies, and deal with any other tasks that the harassment is preventing/impairing me from doing.

As stated more clearly in the attached memorandum and affidavit, Aidan Kearney has weaponized social media and trained his followers to harass and leave malicious reviews against his subjects, and anyone including lawyers that helps his

subjects. It is currently too dangerous for a law firm to take this case, just as it is too dangerous for a witness or expert to get involved. I am unable to present my best argument while YouTube is distributing videos designed to incite violence against my family, friends, and witnesses. If this court ordered the death threats down, I would be able to write a brief just as good or better than Google's attorneys, but if this court grants the requested relief, I will allow a law firm to take over the case.

Respectfully submitted by:

Pro Se Rian Waters  3/9/2021

199 Allen ST. E. Longmeadow MA 01028

watersrian@gmail.com

(530) 739-8951

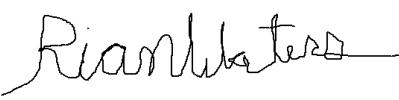
Certificate Of Service

I, Rian Waters, hereby certify that on March 9th 2021, I served this motion, and the attached memorandum, and affidavit on Facebook, Google, Aidan Kearney, Maura Healey, and Jim Dalton by emailing:

andrew.batchelor@state.ma.us, jaronson@kiernantrebach.com, lbg@rose-law.net, adr@rose-law.net, emiranda@keker.com, MShacham@keker.com, ryan@mclanelaw.com

The listed Defendants all agreed to accept email service.

Subscribed under the penalties of perjury.

Dated March 9th 2021 

Certificate Of Compliance

I recently asked the Defendants if they would like to confer, and I asked Google and Facebook if they wanted to confer about this motion back in December 2021

Dated March 9th 2021 

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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

PLAINTIFF’S MEMORANDUM IN SUPPORT OF HIS MOTON FOR
ORDER UNDER LOCAL RULE 83.2.2 GOVERNING EXTRAJUDICIAL
STATEMENTS

Table of Contents

Routine Harassment Against Lawyers. 2

The First Amendment does not allow a litigant to intentionally obstruct a case..... 3

Aidan Kearney has been trying to start a civil war 4

Additional Statements on Likelihood of success 5

Section 230 Cannot Nullify the Eight, Fifth, and Fourteenth Amendment..... 5

Additional Statement on State Action 6

Class-based invidiously discriminatory animus..... 7

Necessary Measures 7

Conclusion..... 8

“In a widely publicized or sensational criminal or civil case, the court, on motion of either party or on its own motion, may issue a special order governing such matters as (1) extrajudicial statements by parties and witnesses that are likely to interfere with the rights of the accused or the litigants to a fair trial by an impartial jury.” LOCAL RULE 83.2.2

Routine Harassment Against Lawyers.

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

Aidan Kearney is an expert at using and teaching people how to use a tactic known as “stochastic terrorism.” Juliette Kayyem, a national security expert and former assistant secretary at the Department of Homeland Security defines the tactic as “a method of

political incitement that provokes random acts of extremist violence, in which the instigator uses rhetoric ambiguous enough to give himself and his allies plausible deniability for any resulting bloodshed. Violent threats or attacks linked to the rhetoric usually generate muted denials and equivocal denunciations, or claims to have been ‘joking.’” So while I am not worried about Aidan Kearney attacking me, Aidan Kearney’s followers are a different story. Aidan Kearney says he is willing to die for his blog,(Aff 16C) and he says he has followers that love his blog more than he does. Aidan Kearney is popular among far-right extremists, and his longest running advertiser was a gun store in central Massachusetts.

The First Amendment does not allow a litigant to intentionally obstruct a case.

In this case Google, Facebook, and Aidan Kearney were legally made aware that Aidan Kearney was impairing my ability to litigate with harassment,(Aff 24 & 25) and Aidan Kearney is aware that his threats against law firms affect a law firm’s ability to conduct business. “A death is caused of malice aforethought if, under the circumstances known to the actor, the probability of its ensuing from the act done is great and manifest according to common experience.” Aikens v. Wisconsin, 195 U.S. 194, 203 (1904) “It would be impossible to hold that the liberty to combine to inflict such mischief, even upon such intangibles as business or reputation, was among the rights which the Fourteenth Amendment was intended to preserve.” Id. 205 “An act, which in itself is merely a voluntary muscular contraction, derives all its character from the consequences which will follow it under the circumstances in which it was done. When the acts consist of making a combination calculated to cause temporal damage, the power to punish such acts, when done maliciously, cannot be denied because they are to be followed and worked out by

conduct which might have been lawful if not preceded by the acts. 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.” Id. 205-06

“The other evil feared, disorderly and unfair administration of justice, is more plausibly associated with restricting publications which touch upon pending litigation. The very word ‘trial’ connotes decisions on the evidence and arguments properly advanced in open court. *Legal trials are not like elections, to be won through the use of the meeting-hall, the radio, and the newspaper [or social media]*. But we cannot start with the assumption that publications of the kind here involved actually do threaten to change the nature of legal trials, and that to preserve judicial impartiality, it is necessary for judges to have a contempt power by which they can close all channels of public expression to all matters which touch upon pending cases. We must therefore turn to the particular utterances here in question and the circumstances of their publication to determine to what extent the substantive evil of unfair administration of justice was a likely consequence, and whether the degree of likelihood was sufficient to justify summary punishment.” Bridges v. California, 314 U.S. 252, 271 (1941)

Aidan Kearney has been trying to start a civil war

On December 15th, 2020 I informed YouTube that “last week [Aidan Kearney] said Democrats and Republicans can not live together and that the US needs a civil war.” YouTube did not care. (Aff. 26) Aidan Kearney is a far-right cop blog, and on January 6th,

2021 far-right extremists including at least 30 police officers participated in an attack at the US Capitol building which left 5 people dead. According to news reports one officer that participated in the attack used Aidan Kearney's favorite slogan (Aff. 11, 16b) and said, "this is what happens when you poke us."

Additional Statements on Likelihood of success

I will add just a few points in addition to what is written in my TRO/PI memorandum and my oppositions to Facebook's, Google's, and Aidan Kearney's motions to dismiss.

Section 230 Cannot Nullify the Eight, Fifth, and Fourteenth Amendment.

"The Constitution of the United States, with the several amendments thereof, must be regarded as one instrument, all of whose provisions are to be deemed of equal validity. It would, indeed, be most unfortunate if the immunity of the individual States from suits by citizens of other States, provided for in the Eleventh Amendment, were to be interpreted as nullifying those other provisions... Much less can the Eleventh Amendment be successfully pleaded as an invincible barrier to judicial inquiry whether the salutary provisions of the Fourteenth Amendment have been disregarded by state enactments." Prout v. Starr, 188 U.S. 537, 543 (1903) If the Eleventh amendment cannot nullify the Eight, Fifth, and Fourteenth Amendment, then section 230 of the CDA certainly cannot either. "In determining whether a provision of the Constitution applies to a new subject matter, it is of little significance that it is one with which the framers were not familiar. For in setting up an enduring framework of government they undertook to carry out for the indefinite future and in all the vicissitudes of the changing affairs of men, those fundamental purposes which the instrument itself discloses." Bell v. Maryland, 378 U.S.

226, 315 (1964) “Under the Constitution no American can, or should, be denied rights fundamental to freedom and citizenship.” Id. at 318. In a dissenting opinion in *Bell* MR. JUSTICE BLACK wrote “the Constitution does not confer upon any group the right to substitute rule by force for rule by law. Force leads to violence, violence to mob conflicts, and these to rule by the strongest groups with control of the most deadly weapons. Our Constitution, noble work of wise men, was designed — all of it — to chart a quite different course.” Id. 346.

Additional Statement on State Action

Aidan Kearney has bragged on at least 5 occasions that police routinely send him information that they do not send to other media sources. (aff 21b&c) “The involvement of a policeman, a state official, whether or not his actions were lawful or authorized, in the alleged conspiracy would plainly provide the state action needed to show a direct violation of petitioner's Fourteenth Amendment rights entitling [him] to relief under § 1983, and private persons involved in such a conspiracy are acting ‘under color’ of law and can be liable under § 1983... ‘under color of a . . . custom or usage, of [a] State,’ in § 1983, mean that the ‘custom or usage’ must have the force of law by virtue of the persistent practices of state officials... a custom with the force of law in a political subdivision can offend the Fourteenth Amendment even though it lacks state-wide application.” Adickes v. Kress Co., 398 U.S. 144, 145 (1970) “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) “Because respondent did not meet its initial burden of establishing the absence of a policeman [during the public shaming without due process], petitioner here was not required to come forward with suitable opposing affidavits.” Supra. *Adickes* at 160.

Class-based invidiously discriminatory animus

I could present hundreds if not thousands of occasions that Aidan Kearney violated Due Process by means of cruel and unusual punishment because he considered someone a “Social Justice Warrior,” but conveniently in my affidavit that focused on attacks against lawyers several were attacked because of their willingness to stand for social justice or against police corruption. (Aff. 14, 15, 16A&C, 17, 19)

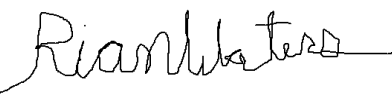
Necessary Measures

I felt I should clarify that if what Aidan Kearney does is legal then I will not violate any laws seeking alternative justice. The Defendants have caused me far more damage than the courts are capable of doing to a man (SAC 55-61)(aff 1, 25, 27-29), but because I excel in reverse engineering and lateral thinking, I can do far more damage than the court is capable of dealing. My first measures will be writing books, first one will teach people how to protect themselves against, and exploit police corruption. Second if necessary, will be a book that teaches people how they can use both passive techniques, and Aidan Kearney’s aggressive tactics to destroy Facebook and Google, and profit from it. Third or possibly second book will either be about cannabis extraction or pro se representation.

Conclusion

This court should grant the requested relief so that a law firm can take over this case, and so witnesses, and parties can safely testify without fear of retaliation.

Respectfully submitted by:

Pro Se Rian Waters  3/9/2021

199 Allen ST. E. Longmeadow MA 01028

watersrian@gmail.com

(530) 739-8951

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

RIAN WATERS,
Plaintiff

FACEBOOK INC., et al.,
Defendants

)
)
)
)
)
)
)

3:2020CV30168 - MGM

AFFIDAVIT OF RIAN WATERS

1) In November 2020 I printed several copies of the complaint and TRO/PI motion for this lawsuit which I intended to mail certified to each of the State Defendants. I also planned on serving the remaining Defendants (excluding Facebook & Google) using the US Marshals, but after Aidan Kearney harassed me by email and on Facebook, and Google's Attorney decided to leverage Aidan Kearney's 11/12/2020 threat in the same week I became severely impaired, and unable to focus on tasks necessary for the case. I also would have sent the first set of interrogatories if there had been no harassment.

2) When my old roommate messaged Aidan Kearney and asked him to remove her address from his website, he said that anyone who helps me deserves to have their sh*t blown up.

3) Michael Gaffney was repeatedly harassed with manufactured pornographic images of the two of us in bed after he filled out an affidavit for the state case 1879CV0344.

4) Katherine Peter sent an email threatening to harass my cofounder for Cannatopia Music Festival in January 2019 before court hearings.

5) Aidan Kearney spent almost five minutes shaming Amanda Sawyer in January 2020, and literally said the reason she deserved to be shamed was because she was willing to be my witness.

6) Kathryn Narcisi sued Turtleboy Sports in Rhode Island in Superior court, which was later transferred to federal court.

7) On August 10th 2019, Aidan Kearney published an article on TBDailyNews.com, titled “Kathryn Narcisi Has A New Lawyer And The Providence Journal Wrote An Inaccurate Article About Her Lawsuit Against Turtleboy And Her ‘Businesses’” In the article Aidan Kearney wrote;

a. “‘Failure Swift’s’ CAPS LOCK LAWSUIT was initially filed by Cranston State Rep, and twice held in contempt attorney, Christopher Millea. She then fired him because she thought he was colluding with me to sabotage her lawsuit.”

b. “This is her new attorney, Edward M. Pepe, an associate at Moretti, Perlow, and Bonin. They can be found on Facebook (he shared a link to their Facebook page) , and **as always we urge you NOT TO go to their page and leave negative comments and reviews...** Sure, it’s pretty low and pathetic for a lawyer to take on a case like this”

8) Aidan Kearney explained on Youtube that **Christopher agreed to ask for a continuance** on a TRO hearing when Aidan Kearney was not able to show up **in exchange for Aidan Kearney removing pictures of Christopher Millea’s children from Turtleboysports.com.** Which is why Kathryn fired him.

9) Robert Fojo filed for a harassment order against Aidan Kearney in New Hampshire and presented “numerous” harassing postings that were posted on his law firm’s and personal Facebook accounts to the court.

10) On May 3rd 2020 Aidan Kearney published a blog on Turtleboysports.com titled “Bootleg Avenatti [New Hampshire Attorney Robert Fojo] Files \$5K Lawsuit Against Bar Employee For Sharing TB Blog And Screenshots Of Threatening Messages, Also

Threatened To Sue His Own Client Feta Cheese Freddie” The article shared a link to his law firm’s Facebook page and said **“please do NOT flood his Facebook page with bad reviews.** He might sue you too!!”

11) On May 18th 2020 Aidan Kearney posted an article on TurtleboySports.com titled “Bootleg Avenatti And His Boy Toy Michell Fleming Are Not Gonna Be Pleased After His Bullshit Restraining Order Against Me Was Denied By A Manchester Judge” In the article Aidan Kearney says that he told the judge that “the alternative to saying, ‘DO NOT CONTACT HIM,’ was ‘CONTACT HIM,’” After stating several insults Aidan Kearney said **“Don’t. Poke. The. Turtle.”** He then posted a screen shot from Robert Fojo’s client listing a phone number and stated “Now the fun begins.”

12) Aidan Kearney made harassing statements about the lawyer who represented Talib Kweli in a case against Turtleboy Sports.

13) Aidan Kearney harassed George Leontire on numerous occasions because George Leontire was representing a Plaintiff that sued him in Massachusetts Superior court.

14) On February 7th 2019, Aidan Kearney published a blog on TBDailynews.com titled “Reporter Who Whines About Laying Off Journalists Is Demanding Buffalo Police Take Down Blue Lives Matter Flag Because A White Lawyer Said It’s ‘Intimidating’” In the article Aidan Kearney said

a. “Then there’s this Becky: [shows pictures of her] Her name is Erin Bahn, and she became a lawyer after a failed career as a ballerina. I sh*t you not – a grown woman who tried and failed to become a professional ballerina.”

b. “The fact that any law firm would be dumb enough to hire someone this stupid is mind boggling. **I’d suggest giving Kavinoky Cook [(Erin Bahn’s Law firm) he posted a link to their website] a bunch of bad reviews on Facebook,** but they’re so technologically inept they don’t even have any social media accounts.

14.1 Also notable the comment section had a lot of racist comments, comments against or supporting flag code violations for police, and comments that seemed to threaten to rape Erin Bahn.

15) On November 18, 2017, an article was published on TurtleboySports.com titled “Alli Bibaud’s Lawyer Who Is Blaming State Police For Doing Their Job Calls Turtle Riders Fat Pussies, Tells Them To Shut The F*ck Up For Exposing Illegal Campaign Contributions To Karyn Polito” The article that was published under the name Turtleboy posted a link to the law firm’s Facebook account, and said **“Whatever you do, DO NOT go to their Facebook page and give them a rating if you’ve never retained them as counsel!!!”**

a. Several commentators harassed Michael Wilcox calling him a liberal n*gger, and several other insults, and **three commentators noted that the law firm he worked for took down their Facebook page.** All three comments had over 20 likes.

b. “They disabled facebook after 7 hours lol”

c. “The dude’s business facebook page is down, bummer.”

d. “‘DO NOT go to their Facebook page and give them a rating if you’ve never retained them as counsel!!!’ it’s down!!!”

16) On April 27th 2016, Aidan Kearney published a blog on Turtleboysports.com titled “Hampshire College Lawyer Threatens To Sue Turtleboy Because Students Are Butthurt About Being Called Out For Being Buttnuts” The article states that an attorney named Joanna Olin sent a cease and desist letter. The article responded saying the following statements;

a. We will “keep doing what we’re doing by calling out each and every social justice warrior terrorist who has declared war on free speech”

b. **“Allow me to make myself abundantly clear – Don’t. Poke. The. Turtle.”**

c. “I don’t know why you insist on feeding us material in the form of stupid, dumbass emails like this. But make no doubt about it – social justice warriors have declared war on the First Amendment and we will DIE fighting to protect it.”

d. “Or just keep poking the turtle... Either way we go strap for strap at Turtleboy Sports. Your move.”

e. The article also **linked to the lawyer’s LinkedIn account**, which has since been taken down.

17) On September 14th 2016, An article was published on TurtleboySports.com titled “SJW New York Lawyer Sent Hilarious Fax To Doherty High School, Telling Them To Cancel Nonexistent Suspension For Football Player Who Made The Whole Story Up” The article stated;

a. “They’ve also been bombarded with messages from SJW ambulance chasing lawyers such as Brian Ponder from New York.” [posted pictures that included Brian Ponders Law Firm’s contact details.]

b. “Based on his Facebook page he makes some money fighting cases that involve ‘social justice.’”

c. The article **also posted a link to the reviews section of Brian Ponders Avvo account.**

18) On May 5th 2018, a blog was published on Turtleboysports.com titled “The Boston Globe Is Suing Hilary Sargent For Speaking Out About Sexual Harassment And Their Lawyer Is A Pink Pussy Hat-Wearing Feminist Who Is Trying To Silence A Victim On Behalf Of Rich White Men” The article listed the contact details of attorney Sam Regenbogen, and the law firm she works for “Proskauer.” Some of the comments were sexual harassment in my opinion.

19) On January 18th 2017, an article was published on Turtleboysports.com titled “Unloveable Troglodyte Is Forcing Groton-Dunstable High School Chorus To Cancel Performance At Historic Italian Basilica With Her ACLU Thug Lawyers” the article stated;

a. “she’s brought along her soulless bully lawyers from the ACLU. Remember when the ACLU was a legitimate organization looking out for normal people’s civil liberties? Good times. Now it’s basically just used to attack cops...”

20) Samantha Cardin plead the 5th and refused to testify against me because my lawyer showed her transcribed jail phone calls where she admitted she did not think I was guilty, and she acknowledged the cabinet that fell which she lied about. The lawyer also showed the text messages I mentioned earlier.

21) I intended to provide an affidavit for my opposition to Aidan Kearney’s motion to dismiss, but I forgot and was rushing. Although I now state under penalties of perjury that all allegations in that memorandum are true, including but not limited to;

a. A law firm is willing to represent me in this case if they are protected from harassment.

b. In Aidan Kearney’s book he stated “Our [twitter] account was followed by... the Boston Police Department and many other police departments.”

C. In Aidan Kearney’s book he stated, “we were also getting information the rest of the media couldn’t get because police on the scenes were either texting our sources or me personally, or messaging the Turtleboy Facebook page.” On various YouTube shows and in articles on his website Aidan Kearney has made the same allegation with similar words.

23) I have another example of Aidan Kearney admitting that he would “normally” direct harassment to a lawyer, but I am having a hard time finding it.

24) I sent an email to Facebook’s lawyers informing them that Aidan Kearney was harassing me on the Arise for Social Justice page with a link, Facebook allowed him to do it again the next day.

25) I sent several emails to Google’s lawyers informing them that Aidan Kearney’s harassment on their platform was not just causing cognitive impairment, but was also indirectly terrorizing my physical wellbeing, Google has done nothing.

26) On December 15th 2020 I informed YouTube that “last week [Aidan Kearney] said Democrats and Republicans can not live together and that the US needs a civil war.” YouTube did not care.

**THE REASON I WILL TAKE WHATEVER MEASURES NECESSARY FOR
JUSTICE**

27) On the day Samantha Cardin robbed me and tried to frame me she said the reason she was doing what she was doing was because I believed her father molested our daughter. At the time I did not know what she planned on doing.

28) On August 23rd 2019 Edward Cardin (Samantha Cardin’s father) seen that the company I was working for parked the work truck in front of his house. Edward Cardin got my nonverbal special needs daughter completely naked in a small pool in front of his house, and when he seen me go into the work truck he said “ohh that feels good huh Lilah, luckily daddy isn’t around and I can touch you whenever I want” Three other construction workers witnessed my daughter naked in the pool, and I called and left a message on a DCF workers Voicemail but they never returned my call. DCF also changed my testimony about the reasons I thought Edward Cardin molested my daughter, and they did not talk to the doctor or social worker that I informed them that I had told.

29) Without any justice in this case I cannot protect my daughter using proper means.

Signed under the pains and penalties of perjury this 9th day of March, 2021

Pro Se Rian Waters 

199 Allen ST. E. Longmeadow MA 01028

watersrian@gmail.com

(530) 739-8951

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION 3:20-cv-30168

RIAN WATERS,
Plaintiff

FACEBOOK INC.
GOOGLE LLC.
AIDAN KEARNEY,
KATHERINE PETER
Defendants

THIRD PROPOSED SECOND AMENDED VERIFIED COMPLAINT

I PRELIMINARY STATEMENT:

1 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. Aidan Kearney then uses his weaponized public shaming device to harass and cause severe emotional distress to the suspects and anyone willing to be their exculpatory witnesses. 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. My

II. JURISDICTION AND VENUE

4 Alternatively, diversity jurisdiction can also be invoked as the amount in
controversy exceeds 75,000 dollars, and the Defendants conduct business/advertise in
Massachusetts making jurisdiction reasonable.

FBAPP090

6 Venue is proper in this Court, as the underlying court case and many of the events
that gave rise to this action occurred in Springfield Massachusetts, some of the parties are
from Massachusetts.

III. PARTIES

7 Plaintiff Rian Waters (“I/me”) is a resident of Hampden County, Massachusetts.

8 I pioneered the industrialization of cannabis oil extraction in Northern California
with the company I founded Emerald Science LLC. Prior to the first Rico violations I was
working on Cannatopia Music Festival with several people that were experts and or leaders
in their respective fields of business. The ultimate goal of Cannatopia Music Festival was
to create an internationally recognized cannabis brand.

9 Defendant Facebook INC (“Facebook”) headquarters is in San Mateo County
California. Facebook operates the largest social media platform in the world.

10 Facebook’s revenue exceeded 85 billion in 2020.

11 Defendant Google LLC (“YouTube” or “Google”) headquarters is in Santa Clara
County California. Google LLC is listed as the service provider for YouTube.

12 Google LLC’s revenue exceeded 181 billion in 2020.

13 Defendant Aidan Kearney is a resident of Jefferson MA. Aidan Kearney was the
sole owner and manager of Worcester Digital Marketing LLC, and Turtleboy Industries
LLC. both Massachusetts companies that operated Turtleboy Sports. (“TS”).

14 Defendant Katherine Peter is a resident of North Attleboro MA. Katherine was a
writer for Aidan Kearney.

IV. STATEMENT OF FACTS

A. State Action

15 Aidan Kearney sent and received emails discussing the criminal allegations against
me and or complaints against him with multiple state agents and or police officers. (Exhibit
A)

16 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.

17 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.

18 Aidan Kearney routinely harasses victims of police corruption on his “weaponized”
social media account’s and portrays the victims as culprits.

19 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.

20 Police officers have routinely refused to hold Aidan Kearney accountable for
crimes. Mass GL 268 13b, is one example where Aidan Kearney bragged that he not only
had intent to cause emotional and financial harm to punish for participation in court
hearings, but that he took pleasure in seeing me petrified of him, and he celebrated that the
blogs published before court hearings “destroyed” me and would prevent me from getting
a job. Springfield police, East Longmeadow police, Mass. State Police, and the Mass.
Attorney General’s office, all refused to hold him accountable.

21 On December 8th, 2019 Aidan Kearney stated that if I didn't drop the criminal complaint against him that he would coordinate with the Hampden County DA's office to reopen the criminal case against me that was dismissed.

22 A Springfield district court clerk cited outdated elements of Mass GL 268 13b when denying probable cause for Aidan Kearney. I filed a consolidated motion for a judge to redetermine both criminal complaints, it was denied by Hon. John M. Payne. I filed a motion for an explanatory memorandum, asked that the court at least cite which element he thought I failed to satisfy. Hon. John M. Payne denied that motion too, even though Aidan Kearney regularly brags that he was successful at causing emotional and financial damage. Judge Jane Mulqueen also prevented me from listing death threats, and ignored the ones listed in my affidavits.

23 Current and former police officers have harassed and intimidated me on Turtleboy's Facebook and YouTube social media accounts and used Turtleboy's slogan "don't poke the turtle" (Exhibit B.) Notably this same slogan was used by one of the 30+ police officer's that participated in the January 6th 2021 attack on the US capital building.

24 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.

25 For the reasons set forth above, and reasons currently unknown the Defendants should be considered as acting under the color of the law as the Defendants have received significant support/encouragement both overtly and covertly, and the state has willingly

accepted the benefits of the Defendants' schemes, and the State has intentionally tolerated the illegal conduct.

B. Facebook

26 Facebook states that the purpose of their Terms of Service is to make our community
safer and more accountable.

27 Facebook's Terms of Service require it's users;

- a. Use the same name that you use in everyday life.
- b. Create only one account (your own)
- c. use your timeline for personal purposes.
- d. Not share your password, give access to your Facebook account to others, or transfer your account to anyone else (without our permission).

28 Aidan Kearney uses the following personal Facebook accounts for commercial public shaming; “Clarence Woods Emerson”, “Uncle Turtleboy – Aidan Kearney”, and “Terrance Collie”

29 Aidan Kearney has argued in multiple court cases including 1879CV00344 that he is not liable for the posts on his Facebook accounts because he has given out his passwords to too many people.

30 Facebook’s Terms of Service state that you cannot use Facebook if: “We’ve
previously disabled your account for violations of our Terms or Policies.”

31 Aidan Kearney claims that Facebook has disabled over 30 of his accounts.

32 Facebook says that you may not use their product to do or share anything;

- a. That violates these Terms, our Community Standards, and other terms and policies that apply to your use of Facebook.
- b. That is unlawful, misleading, discriminatory or fraudulent.
- c. That infringes or violates someone else's rights.

33 Aidan Kearney publishes a link to his YouTube videos on all his Facebook accounts at the start of each episode.

34 Facebook allows users to watch YouTube videos on their platform without leaving TS's Facebook pages.

35 Facebook released a study into emotional contagion in 2014 (Kramer et al., 2014) where for one week in 2012 they manipulated the News Feeds of 689,003 Facebook users, half of these participants had some negative stories posted by their friends removed from their News feeds, and the other half had some positive stories removed. The study showed that the general tone of content that people are exposed to on Facebook has a powerful effect on their mood.

36 While users own the content and information on Facebook and are free to post what they wish, Facebook gleans information from that content. User content and the data gleaned from user content have materially different functions and are not analogous. The former is used for communication between users while the latter is used by Facebook to conduct its business of creating engaged users and selling their attention to advertisers. The processing that goes into each users' newsfeed is the result of behavioral analysis conducted on the user and the users' network. This aggregated information is then applied to the personalized information of users to create the highest engagement rate.

37 I used all the available methods to report the Turtleboy Sports profiles, I reported the most obstructive posts, and I know people that reported numerous Turtleboy Sports posts, but Facebook has never completely removed Turtleboy Sports from their platform, or even brought them down to a single profile.

C. Damages

38 I have been diagnosed with Adjustment Disorder. Aidan Kearney's articles have been identified as the cause and stressor of the disorder, and I have been going to therapy since October 2018.

39 My credit worthiness has been destroyed on both typical credit reporting agencies, and secondary credit reporting agencies such as Google.com.

40 I have been permanently disabled from my trade as an entrepreneur and received significant impairment in my secondary fields of professional poker and cannabis extraction.

41 I suffered physical pain and mental anguish, including diminished enjoyment of life. In June 2020, I started suffering with and was diagnosed with Gerd as a result of the Adjustment Disorder's symptoms. I can no longer eat a lot of acidic foods.

42 I have not been able to have public posts on my Facebook page since January 2019, because every time I have Facebook sent the degrading ceremonies to my friends and family.

43 It became too dangerous for me to present evidence or name witnesses in this instant case and civil case 1879CV00344, and I lost the ability to make strong written and oral arguments.

44 The Defendants have also made it too dangerous to get a job that works with the public, not only would I fear for the business's reputation, but I would be afraid to go home after work.

V. STATEMENT OF CLAIMS

COUNT I: Implied Warranty of Merchantability

Facebook, Google LLC

45 Plaintiff restates and incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

46 Google LLC refers to their platform as a product when describing to the public how YouTube live works. <https://www.youtube.com/howyoutubeworks/product-features/live/>

47 Facebook refers to their platform as a product here <https://www.facebook.com/help/1561485474074139> "The Facebook Products include Facebook (including the Facebook mobile app and in-app browser), Messenger..."

48 Facebook and Google state that they quickly work to remove harmful content when they are made aware. (Exhibit C)

49 Common law needs to adapt to the internet age and recognize that these platforms are products. Where there is a right there needs to be a remedy.

50 Facebook allowed users to provide context to violations of their rules in January 2019, but they have since removed that feature.

51 Facebook is deliberately indifferent to the rights of US citizens as they do not currently provide any method to explain why or how something is unlawful, discriminatory, or violating a person's rights.

52 Google is deliberately indifferent to the rights of US citizens as they do not currently have an effective method of reporting or preventing witness intimidation on their platforms. After I reported threats of violence and witness intimidation, Google responded several months later saying “we do not remove content due to allegations of defamation. Consistent with Section 230(c) of the Communications Decency Act.”

53 Facebook and Google are aware that their products can be used to influence
elections and should expect that their products would be used to obstruct court cases.

54 Facebook and Google are aware that hate speech and misinformation is a rising
problem on their platforms, and that these problems have real world consequences.

55 Facebook's and Google's platforms are defectively designed and unreasonably dangerous because of their susceptibility to be used as a weapon without any user support, and without any effective method to report witness intimidation or mitigate the effects.

56 Facebook willingly implemented a system that allows users to create accounts under almost any name with only verifying that the user owns an email address. If someone commits a crime with a fake name Facebook does not make any attempt to identify the culprit, and Facebook does not have any notable victim support.

57 Google is the world's largest email provider, and Google willingly implemented a system that allow users to create an account under almost any name with only verifying that the user has access to a phone.

58 Facebook and Google’s platform are defective in their respective designs because
the foreseeable risks of harm posed by the products/platforms could have been reduced or
avoided by the adoption of a reasonable alternative design.

59 There are platforms on the internet that have competent safeguards built into their product design to prevent the abuses that have caused me harm. (Exhibit D)

60 There are safer alternatively designed social media platforms on the market today that do not exploit user data and maximize advertising profits by amplifying the distribution of hateful and threatening content based on behavioral analysis. (Exhibit D). Twitter allows users to report multiple posts at once to provide context. Twitch allows users to explain context in writing, and they will even remove bad actors from their platform that participate in hate speech elsewhere.

61 Safer alternative designs would decrease the cost of content moderation. The Defendants could require users to monitor comments on their own pages like Twitch does, or they use a design that delegates more moderation tools to certain users, and the Defendants could use an alternative design that allows a panel of volunteers to vote on whether violations require moderation. The Defendants would also decrease moderation cost if they laid out transparently what punishment is paired with what rule violation like other companies have, and if the Defendants trained their employees to be reasonably consistent with the enforcement of rule violations like other companies have done.

62 Facebook has deployed a safer alternative product design in other countries such as Germany.

63 As a result of the foregoing acts and omissions, I have suffered significant injuries and damages as described herein with particularity. Google and Facebook's conduct was willful, wanton, reckless, and, at the very least arose to the level of gross negligence so as

to indicate a disregard of the rights and safety of others, justifying an award of punitive damages.

COUNT II: GROSS NEGLIGENCE

Google LLC, Facebook INC

64 Plaintiff restates and incorporates by reference the allegations contained in all of the preceding paragraphs of this Complaint.

65 Google and Facebook knew or should have known that their platforms were being routinely used to harass US citizens.

66 Google and Facebook have failed to adequately train their employees to respect the rights of US citizens and litigants in court cases.

67 Facebook and Google's negligence are the proximate cause of my injuries, harm and economic loss, which I have suffered and/or will continue to suffer.

68 Had the Defendants took reasonable care I would not have suffered those injuries and damages as described herein with particularity.

69 On October 29th 2020 I sent a "legal complaint" to YouTube informing them that Aidan Kearney planned on using their platform at 9pm to likely harass me and the witnesses in this case. I also sent a legal complaint informing them of Aidan Kearney's 11/12/2020 threat and stated that he posted my address on their platform. YouTube waited until 2021 to respond, and they stated that they consider the threats and witness intimidation to be defamation, and they stated that section 230 of the CDA makes them immune.

70 Facebook and Google had a duty under Massachusetts common law to proceed in good faith, and to act with reasonable diligence to bring their litigation to a final conclusion,

and to conduct themselves with at least that modicum of civility, courtesy and respect, for all of the parties in this case.

71 Facebook and Google also had a fundamental duty under the maxim *sic utere tuo ut*
alienum non laedas, to not allow their property to routinely trample on the rights and
livelihoods of US citizens.

72 I further allege that the complete disregard of the rights and safety of others, justifies
an award of punitive damages.

**COUNT III: 42 U.S.C. § 1985(2) WITNESS INTIMIDATION/ OBSTRUCTION OF
FEDERAL CASE. Google LLC, Aidan Kearney,**

73 Plaintiff restates and incorporates by reference all the allegations contained in the
preceding paragraphs of this Complaint.

74 Aidan Kearney, and several currently unknown parties conspired using secret
groups on Facebook, and or Discord. (Exhibit G)

75 In the first 90 seconds of Aidan Kearney’s August 8, 2019 speech, titled “Turtleboy
is a wartime conservative” Aidan Kearney described TS as a blog that has “weaponized
public shaming, [that he uses] as a deterrent to ratchet public behavior.” Aidan Kearney
stated in court that suing him is the most ratchet thing you can do.

76 On 2/12/2020, Aidan Kearney said he was not being hyperbolic when he said he
would rather die or go to jail then censor his speech because of a court order.

77 Aidan Kearney uses a virtual private network and a “plethora” of fake Facebook profiles to hide his internet activities, and he encourages his followers to do the same.

78 On June 23rd, 2019, Aidan Kearney hosted a show on YouTube, after discussing 1879CV00344, Aidan Kearney said “If you f*ck with me in court you will be made an example of, I’m going to ruin your life... and I’m a vindictive f*ck too, I’m the guy that can be very friendly to you, and be nice. But if you poke me, I am going to ruin you, I dream, I get f*cking hard over it right, I cum to it, when I think about, literally I bust a f*cking load thinking about punishing you. So please bring it on, I really enjoy it.”

79 On November 12th 2020 Aidan Kearney described how he used his platform to cause distress and punish the family members of a pro se litigant in a different case, Aidan Kearney then stated “When general Sherman marched to f*cking Atlanta he lit everything on fire ***** everything, men women children dogs everything ***** burns until you surrender that's how it ***** works if you want to declare war then people ***** die in war including civilians. When we bombed Hiroshima and Nagasaki we knew that a bunch of ***** kids women are gonna die in that too ***** bad then ***** surrender ***** surrender and then they finally surrendered didn't they, that's what you gotta do unfortunately there is collateral damage so **I want to make sure the message is sent here, if you **** with me, if you try to sue me, I'm not going to go after you, I'm going to go after your ***** family**, don't **** with me, that's all I'm saying alright. I'm not playing with these people I paid 30,000 ***** dollars in legal fees last year the sh*ts not ***** cute anymore and I'm not ***** playing defensive and hiding anymore. **I'm going to burn your family to the ground** just understand that.

80 On November 30th, 2020 I was contacted by an attorney working for WILSON SONSINI GOODRICH & ROSATI PC named Brian Levy. He started the conversation

saying that my case was frivolous and that if I did not dismiss the case that they would charge attorney fees. I asked if he read my complaint and memorandum with my TRO/PI motion. Brian stated that he did review my filings, but he said that Google and the first circuit disagree with Supreme Court Justice Clarence Thomas, and that therefore they would move for attorney fees. Four days later Google hired three attorneys which they obviously knew the court would not require me to pay for.

81 Google has continued to distribute threats and other obstructing material even after they were informed that the threats were critically impairing my ability to litigate.

82 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. Notably Google will disable an account without warning that exposes wealthy people like Robinhood.

83 Google's conspiratorial agreement and invidiously discriminatory animus (not required) can be inferred by their willingness to profit off of clear rule violations as well as their extreme magnanimity.

84 The Defendants actions and inactions have critically impaired me which delayed amending the complaint and prevented me from presenting my best arguments. Whenever I would look for dates of misconduct, the harassment stresses my adjustment disorder causing preoccupation related to the stressor and its consequences.

85 The threats caused significant impairment in my ability to litigate this case, as well as damage to my personal, family, social, occupational, and other important areas of functioning.

86 The Defendants actions and inactions caused prejudicial damage to the potential jury pool, and harmed witnesses which causes a community intimidation effect, and makes me too afraid to bring in experts or more witnesses such as my business partners. Additionally, the obstruction made lawyers too afraid to take this case, and one law firm agreed to take the case if the status changes.

87 I further allege that the complete disregard of the rights and safety of others, and Google's willingness to exploit mental illness justifies an award of punitive damages.

COUNT IV: 42 U.S.C. § 1986 NEGLECT TO PREVENT.

Facebook INC, Google LLC

88 Plaintiff restates and incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

89 Facebook and Google's attorney's received notice of Aidan Kearney's long history attempting to obstruct justice on or before November 31st 2020. They should have expected Aidan Kearney to use their platforms to obstruct justice.

90 I sent a one minute video clip of Aidan Kearney's 11/12/2020 threat inciting violence against my family to Attorney's representing Google on but not limited to December 1st and December 21st 2020. I informed them that their platform was distributing content that was causing me significant impairment, and even bodily harm. I also informed them that the harassment would likely significantly delay the case.

91 I informed Facebook of the 11/12/2020 threat that was and is still watchable without leaving Facebook, and they were legally made aware that the threat was being promoted on their platform.

92 Facebook received hundreds of reports that Aidan Kearney's profiles were in violation of their terms of service, and Facebook acquiesced to those violations by allowing the Defendant to continue violating their rules.

93 Defendant corporations are "persons" that were aware or should have been aware of information that their platforms were going to be used and were used to obstruct this Federal case.

94 The Defendants could have used their moderating power to stop the obstruction or warned Aidan Kearney, Google and Facebook, could have stopped their algorithms from distributing the content to people that were not following Turtleboy Sports, or the Defendants could have informed Federal Authorities, or offered me a different form of support to mitigate the damages.

95 The Defendant's had the power to stop obstruction but neglected to do so.

96 As a proximate result of the foregoing acts and omissions, I have suffered significant injuries and damages as described herein with particularity.

COUNT V: 18 U.S.C. 3 1962(C) CIVIL RICO

Aidan Kearney

97 Plaintiff restates and incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

98 The Enterprise. Defendant Aidan Kearney, and non parties, Leigha Genduso, Sean Odonnell, and the now dissolved companies Worcter Digital Marketing LLC and Turtleboy Enterprises LLC and numerous other parties together form an association-in-fact for the common and continuing purpose described herein and constitute an enterprise within the

meaning of 18 U.S.C. 3 1961(4) engaged in the conduct their affairs through a continuing pattern of racketeering activity. The members of the enterprise functioned as a continuing unit with an ascertainable structure separate and distinct from that of the conduct of the pattern of racketeering activity. There are also other members of the enterprise who are unknown at this time.

99 Alternatively, Worcter Digital Marketing LLC and Turtleboy Enterprises LLC each constitute a separate enterprise within the meaning of 18 U.S.C. 3 1961(4).

100 Alternatively, Worcter Digital Marketing LLC and Turtleboy Enterprises LLC together constitute an enterprise within the meaning of 18 U.S.C. 3 1961(4).

101 Each enterprise has engaged in, and their activities have affected, foreign commerce.

102 Pattern of Racketeering Activity. Defendant Aidan Kearney, and non-parties Leigha Genduso, and Sean Odonnell, and others currently unknown each of whom are persons associated with, or employed by, the enterprise, did knowingly, willfully and unlawfully conduct or participate, directly or indirectly in the affairs of the enterprise through a pattern of racketeering activity within the meaning of 18 U.S.C. 1961 (1), 1961 (5), and 1962(c).

103 The racketeering activity was made possible by the listed parties' regular and repeated use of the social media profiles of the enterprise. Defendants had the specific intent to engage in the substantive RICO violations alleged herein. Aidan Kearney, and the numerous other members of the RICO enterprise agreed to and did conduct and participate in the conduct of the enterprise's affairs through a pattern of racketeering activity and for

the unlawful purpose of obstructing justice and intentionally harming the Plaintiff's business and property.

104 Pursuant to and in furtherance of their RICO scheme, Aidan Kearney and other parties committed multiple related acts of threat to commit murder, obstruction of justice, and witness intimidation that form the basis of the RICO claim.

105 **Predicate act; Threats of murder**

106 on 02/13/2019 an unidentifiable party wrote in the comment section of a Turtleboy Sports article "I would love to slaughter Rian's entire family down to the child." Katherine Peter responded to the next comment showing that she was aware of the above threat.

107 On or about January 7th 2019, and February 13th 2019, members of the Turtleboy enterprise made the following threats to murder on Turtleboy's Facebook accounts.

(Exhibit E)

- a. "I would like to kick him in the kidneys and he never gets up"
- b. "I'll put him out of his misery."
- c. "I'd break every bone in his body."

108 **Predicate act; 18 U.S.C. § 1512 (b)(1) Intimidating person to influence or delay official proceeding or alternatively 18 U.S.C. § 1512 (C)(2)/ 18 U.S.C. § 1512(D)(1):**

109 On January 6th 2017 Aidan Kearney published a blog on Turtleboysports.com and at least one Facebook account in an effort to prevent, hinder, or delay an official proceeding against the Ludlow jail for not having adequate procedures providing food for people with gluten allergies.

110 On but not limited to July 14th 2020, Aidan Kearney said my comments about police on Facebook (which were discussing a possible lawsuit) were one of the primary reasons “I ended up on Turtleboy” (his weaponized public shaming blog.) Notably his efforts were successful at preventing the lawsuit.

111 On October 7th 2020, October 29th 2020, and November 12th 2020 Aidan Kearney
knowingly used intimidation with intent to influence or delay my testimony in this instant
federal case.

112 Google through their attorney used the threat as leverage to get me to dismiss this case against them, and they have continued to distribute the threat after learning about the schemes history and goals.

113 Aidan Kearney has harassed party and witness Katherine Peter several times on
YouTube and Facebook since I listed her as a party in this Federal case. He accused her of
being arrested for child abuse. I informed Facebook and Google through their attorney's,
but they continued to facilitate the scheme.

114 Aidan has also harassed me on Facebook several times including December 2nd
2020, Facebook was made aware, and continued to facilitate the scheme and distribute
obstructive content.

115 **Predicate Act: 18 U.S.C. § 1513 (e) Retaliation of person for providing**
information to law enforcement:

116 On September 10th 2020, Aidan Kearney used his blog to harass and retaliate against
Monica Cannon-Grant because she filled a Boston police report,

117 On December 24th 2019 Aidan Kearney used his blog to harass and retaliate against Noah Toledo, and I believe it was because Noah reported crimes to FBI.

118 On March 14th 2019 Aidan Kearney used his blog to harass and retaliate against Lysa Heslov, because Lysa reported crimes to the FBI.

119 The acts set forth above constitute a pattern of racketeering activity pursuant to 18 U.S.C. § 1961(5).

120 As a direct and proximate result of the Defendants' racketeering activities and violations of 18 U.S.C. § 1962(c), Plaintiff has been injured in his business and property in that: he has suffered a loss of business and employment opportunities, and legal entitlement to business relations unhampered by schemes prohibited by the RICO predicate statutes.

121 The damages to my mental health should be considered because I was an entrepreneur, and my mental health is directly related to my ability to conduct business.

COUNT VI: 18 U.S.C. 3 1962(D) CONSPIRACY TO COMMIT RICO

Facebook INC, Google LLC, Aidan Kearney, and Katherine Peter.

122 Plaintiff restates and incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

123 Aidan Kearney encouraged death threats by misrepresenting details of prior court proceedings and liking threats of violence. (Exhibit F) Also on January 4th, 2019 Aidan Kearney liked the following threats that were directed at me;

- a. "Hey pornstash, Make me Joe Doe #11. If I find your *ss you'll be sorry. Luckily the poker community is small. You'll remember Mike when he makes your teeth even more f*cked up! Pussy b*tch!"

- b. “Ppl like u make me wish that we can do a legit purge! Ya *ss wud be snipped with the quickness. When this blows up in ur face I hope u truly hide cuz u got a sh*tload of angry ppl now that aint happy with u n are actually bout that life wear bums woman beaters like u get karma...”

124 Google and Facebook are not passively being exploited by rogue employees, their corporate names were listed as defendants in this action, they were legally made aware of the features and general aims of the scheme, and that by distribution they were participating in the racketeering activity, yet they continued to facilitate the scheme and actively participate by distributing the illegal content based on behavioral analysis for advertising profit.

125 Katherine Peter published several inflammatory articles that she claims Aidan Kearney edited to make them more inflammatory knowing that the Turtleboy website and social media accounts are weaponized, and she posted comments underneath a death threat showing she was aware of it.

126 Conspiratorial agreement can be inferred or implied from the circumstances that Google and Facebook share the common purpose with Aidan Kearney of continuing to profit from public shaming advertising revenue, and Google and Aidan Kearney earn a lot of money through donations, they all have supported or participated in the RICO scheme with a financial incentive.

127 The damages were foreseeable and natural consequence of the Defendants’ illegal scheme.

128 The RICO enterprises were dependent on Google and Facebook for growth, reach, and effect. Other large platforms such as Twitter do not tolerate the conspiracy to the same extent, which has forced Aidan Kearney to follow rules and not intimidate people on their platforms.

129 All other major platforms have chosen not to deploy algorithms that amplify
extremists' content. (Exhibit D) More examples can be provided later.

130 Both Facebook's and Google's conduct are sufficient causes independently, but concurrently, they produced a devastating result.

131 As a direct and proximate result of the Defendants' racketeering activities and
violations of 18 U.S.C. § 1962(d), Plaintiff has been injured in his business and property
as described herein with particularity.

**COUNT VII: 42 U.S.C. § 1985 (3) CONSPIRE TO INJURE BECAUSE I
EXERCISED MY FIRST AMENDMENT RIGHT.**

Aidan Kearney, Katherine Peter,

132 Plaintiff restates and incorporates by reference the allegations contained in the
preceding paragraphs of this Complaint.

133 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.

134 Aidan Kearney and Katherine Peter conspired against me and went in disguise on
Facebook so that they could interfere with my right to be fairly heard in court with
conformity to the laws.

135 Aidan Kearney and Katherine Peter conspired against me because of my willingness to stand for social justice.

136 As a proximate result of the foregoing acts and omissions, I have suffered significant injuries and damages as described herein with particularity.

COUNT VIII: PROCEDURAL DUE PROCESS VIOLATIONS 42 U.S.C. § 1983

14TH AMENDMENT Aidan Kearney

137 Plaintiff restates and incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

138 On December 31 2016, Samantha Cardin stole a massive amount of money from me, and made false allegations that got Officer Jeremy Haley to arrest me for animal cruelty and assault and battery.

139 On January 6, 2017, Aidan Kearney published an article repeating Samantha Cardin's criminal allegations on his website and Facebook accounts.

140 On January 6, 2017 I started receiving threats of physical harm and death on Facebook. I deleted the worst ones because they were causing me significant distress.

141 Five of Samantha Cardin's neighbors saw me carrying our 80lb mastiff puppy across the street on December 30th indicating that our dog's injury happened before 12/31/16.

142 None of Samantha Cardin's neighbors were willing to talk to the private investigator that my attorney sent a month after the incident.

143 On February 7, 2018, the criminal charges against me were dropped for failure to prosecute, because Samantha Cardin plead the 5th after my lawyer showed her transcribed jail phone calls where she admitted that she did not believe I was guilty.

144 When the criminal case was dismissed, I offered to show Turtleboy/ Aidan Kearney evidence of my innocence, but he refused.

145 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. (Exhibit A)

146 During a show cause hearing on September 26th 2019 Aidan Kearney alleged that Dr. Martha Smith-Blackmore was the person that informed him of Samantha Cardin's allegations in January 2017.

147 The 14th Amendment States in part "nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

148 Aidan Kearney and his followers intimidated witnesses from providing exculpatory evidence in my criminal case violating my 14th amendment due process rights.

149 As a proximate result of the foregoing acts and omissions, I have suffered significant injuries and damages as described herein with particularity.

COUNT IX: 42 U.S.C. § 1983 EIGHTH AMENDMENT VIOLATIONS.

Aidan Kearney, Katherine Peter, Facebook Inc., Google LLC.

150 Plaintiff restates and incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

151 In the following paragraphs, references to the Eighth Amendment include the Eighth Amendment as applied to the states through the Fourteenth Amendment.

152 Facebook and Google failed to train and or supervise employees and or adopt policies that respect the rights of US citizens, particularly litigants.

153 Facebook and Google developed and deployed machine learning algorithms that discriminate against victims of far-right extremists to maximize short term profits.

154 Facebook and Google have patents for their algorithms, and provide articles that explain how they maximize engagement, which consequently favors extremists' content.

155 Police and state agents should not be allowed to bypass the constitutional restraints of the Eighth Amendment by sending official information to a public shaming blog, and participating in public shaming.

156 Being publicly accused of heinous crimes in an unfair manner and having to endure hundreds of threats and degrading comments in the presence of friends and family is cruel and unusual punishment.

157 On or about July 11th 2019 Aidan Kearney hosted a show online using YouTube, and while talking about me he said "you're never going to get a job again, you can't, I agree with you on that, and you shouldn't because any company that hires you we're going to find them, we're going to let them know who you are, and who hired you" (39:54)

158 On September 26th 2019 after a criminal court hearing for probable cause Aidan Kearney hosted a video on YouTube and published an article on his websites he stated "The first thing I said when I saw him in the hallway and he attempted to be cordial like we were cool, was 'Oh look, it's the woman beating, dog killing piece of sh*t.' It felt so

good because that's exactly what Rian does – assaults women and murders dogs. This is a documented FACT... He is an animal, and he deserves to be treated like one.”

159 On December 18th 2019 while Aidan Kearney was discussing the September 26th 2019 hearing wrote on his website “I did indeed call him a dog killing, woman beating savage, but that’s only because I like the ability to say things that *aren’t* true.”

160 Katherine Peter accused me of being a “puppy murder” and “woman beater” on December 17th 2019 on YouTube, Aidan Kearney also made similar allegations during the same YouTube video.

161 Aidan Kearney and or Katherine Peter accused me of crimes at least 20 times in the last two years, currently it is too stressful for me to look for the dates.

162 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.

163 Facebook’s algorithms materially contributed to the development and sting of the offending content by sending several of my friends and family links to the degrading ceremonies in their Facebook notifications tab and news feeds. Notably they also made it too dangerous to list examples of friends and family as Aidan Kearney’s followers are trained to attack witnesses. (Exhibit H) More examples can be provided later.

164 YouTube’s algorithms materially contributed to the development and sting of the offending content by suggesting the offending videos to radicalized users that liked similar content.

165 Aidan Kearney, Katherine Peter, Facebook, and Google should be considered as acting under the color of the law for the reasons described herein with particularity.

166 As a proximate result of the foregoing acts and omissions, I have suffered significant injuries and damages as described herein with particularity.

COUNT X: DECALATORY JUDGMENT

167 Plaintiff restates and incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

168 Vagueness and Overinclusive: As currently interpreted the sweep of 47 U.S. Code § 230 is unnecessarily broad and written in unclear terms as to ISPs receiving broad immunity even when they knowingly distribute content that furthers a criminal conspiracy which is clothed with the color of law.

169 § 230 lacks clarity and guidance to promote its stated policies including but not limited “to ensur[ing] vigorous enforcement of Federal criminal laws to deter and punish trafficking in obscenity, stalking, and harassment by means of computer.” 47 U.S. Code § 230 (b)(5).

170 Overbreadth: Aidan Kearney brags that he has weaponized Facebook and Youtube, and that he routinely uses their platforms to silence the speech of Black Lives Matter activists, LGBTQ activists, and other Social Justice Warriors. Facebook and Google argue that 47 U.S. Code § 230 (c)(1)&(2), gives them the right to not only ignore rule violations as they deem most profitable, but that they can join the conspiracies that are clothed with the power of law and maximize distribution.

171 Non Delegation: As currently interpreted the immunity granted by 47 U.S. Code §
230 delegates too much power and authority to wealthy for-profit corporations that have a
financial incentive to allow and participate with conspiracies that violate the Constitution.

172 47 U.S. Code § 230 (c)(1)&(2) violates the equal protection clause, as it delegates
absolute discretion to the Tech companies to decide who can enjoy constitutional rights
(their employees, and powerful people/companies like Robinhood), and who gets their
protected freedom trampled on.

173 For all the reasons just stated, 47 U.S. Code § 230 (c)(1)&(2), thereby in effect
invades the areas of protected freedoms secured by the First, Fifth, Eighth, and Fourteenth
Amendments, and therefore should be declared unconstitutional on it's face and as applied.

174 Alternatively this court should use the Constitutional avoidance doctrine to interpret
47 U.S. Code § 230 (c)(1)&(2) using the actual words in the statue and make a declaration
that § 230 does not provide immunity when a party knowingly distributes illegal content,
or when they make it impossible to inform them that they are distributing illegal content.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court enter judgment in his favor
and against the Defendants, and award the following relief:

- A. Declare that 47 U.S. Code § 230 (c)(1)&(2) violates the Fifth, Eighth, and
Fourteenth Amendments of the United States Constitution, both on its face and as applied
to Plaintiff, or alternatively declare § 230 does not provide distributor immunity;
- B. Permanent Injunction the Court deems fit.

- C. Enter judgment against the Defendants for compensatory damages for an amount greater than two million dollars.
- D. Triple damages for RICO claims in an amount greater than six million dollars.
- E. Enter judgment against Facebook for punitive damages. When assessing punitive damages, the court should consider the revenue of Facebook Inc., as well as the extreme difficulty of bringing this case (dealing with death threats and cracking section 230.) For an amount greater than five million dollars.
- F. Enter judgment against Google LLC for punitive damages. When assessing punitive damages, the court should consider the reprehensible actions Google took to exploit mental illness, as well as Google LLC's revenue, and the extreme difficulty of bringing this case (dealing with death threats and cracking section 230.) For an amount greater than ten million dollars.
- G. Award such other relief as is appropriate under the circumstances.

VII. VERIFICATION

I, Rian Waters, hereby declare under the pains and penalties of perjury that the factual allegations contained in this Verified Complaint are true and accurate to the best of my knowledge, information, and belief, on this 15th day of April 2021.

Filed Pro Se by Rian Waters  4/15/2021

WatersRian@gmail.com (530) 739-8951

199 Allen ST. E. Longmeadow 01028 (not the best address, I will update when we find a safe way to do so)

Certificate Of Service

I, Rian Waters, hereby certify that on April 15th 2021, I served Third Proposed Second Amended Complaint on Facebook, Google, Aidan Kearney, Maura Healey, and Jim Dalton by emailing:

andrew.batchelor@state.ma.us, jaronson@kiernantrebach.com, lbg@rose-law.net, adr@rose-law.net, emiranda@keker.com, MShacham@keker.com, ryan@mclanelaw.com

I also mailed the complaint to Katherine Peter using USPS to;

47 Avery St Apt 1, North Attleboro MA 02760

Subscribed under the penalties of perjury.

Dated April 15th 2021



UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

RIAN G. WATERS,

Plaintiff,

v.

FACEBOOK, INC., GOOGLE LLC, AIDAN
KEARNEY, KATHERINE PETER,
JEREMY HALEY, MARTHA SMITH-
BLACKMORE, WILLIAM HIGGINS, JIM
DALTON, MAURA HEALY, and JOHN
DOES 1-10,

Defendants.

Civil Action No. 20-30168-MGM

ORDER

May 11, 2021

MASTROIANNI, U.S.D.J.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Clerk of Court is ordered to close this case.

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

It is So Ordered.

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

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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

ORDER OF DISMISSAL

May 11, 2021

MASTROIANNI, U.S. D.J.

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

It is so ordered.

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

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

RIAN WATERS,
Plaintiff

FACEBOOK INC., et al.,
Defendants

)
)
)
)
)
)
)

3:2020CV30168 - MGM

**MOTION OF PLAINTIFF RIAN WATERS'S TO ALTER OR AMEND THE
JUDGMENT PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 59(e)**

Pursuant to Rule 59(e) of the Federal Rules of Civil Procedure, Plaintiff Rian Waters hereby moves to alter or amend the judgment in the above-captioned matter, and reconsider the denial of the injunctive motions. The grounds for this motion are set forth in the accompanying Memorandum of Law.

Respectfully submitted by:

Pro Se Rian Waters  5/13/2021

199 Allen ST. E. Longmeadow MA 01028

watersrian@gmail.com

(530) 739-8951

Certificate Of Service

I, Rian Waters, hereby certify that on May 13th 2021, I served the above motion and attached memorandum upon the attorneys of record by ECF, and I emailed Katherine Peter at Bristolturtlechick@gmail.com

Subscribed under the penalties of perjury.

Dated May 13th, 2021



**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

RIAN WATERS,
Plaintiff

FACEBOOK INC., et al.,
Defendants

)
)
)
)
)
)
)

3:2020CV30168 - MGM

**MEMORANDUM IN SUPPORT OF MOTION OF PLAINTIFF RIAN WATERS's
TO ALTER OR AMEND THE JUDGMENT**

PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 59(e)

Pursuant to Federal Rule of Civil Procedure 59(e), Pro se plaintiff Rian Waters moves to alter or amend the judgment entered in this matter dismissing the case Sua sponte for failure to state a claim. While I am grateful that the court made a decision, I am afraid that the errors in apprehension and legal conclusions will not give the Appeals court much to work with and the case will be remanded without any real progress. I ask that the court carefully review the legal errors before altering or amending judgment.

Additionally, I move for the court to reconsider, or add findings to the decision to deny the injunctive motions, (Docket #s 17,71) so that they will be ripe for immediate consideration in the Appellate Court.

APPLICABLE LEGAL STANDARDS

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

ARGUMENT

The injunctive motions are not moot.

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

State Action

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

were officially authorized, or lawful” Adickes v. Kress Co., 398 U.S. 144, 152 (1970) “For the reasons set forth above, and reasons currently unknown the Defendants should be considered as acting under the color of the law as the Defendants have received significant support/encouragement both overtly and covertly, and the state has willingly accepted the benefits of the Defendants’ schemes, and the State has intentionally tolerated the illegal conduct.” (SAC 25) see also (SAC 15-24, 137, 150, and 165.) “It is not enough to examine seriatim each of the factors upon which a claimant relies and to dismiss each individually as being insufficient to support a finding of state action. It is the aggregate that is controlling.” Jackson v. Metropolitan Edison Co., 419 U.S. 345, 95 S.Ct. 449, 42 L.Ed.2d 477 (1974) “Mindful of the fact-sensitive nature of the inquiry, [the Supreme Court] staunchly eschewed any attempt to construct a universally applicable litmus test to distinguish state action from private conduct. Instead, they have directed lower courts to take a case-by-case approach, sifting facts and weighing circumstances [so that] the nonobvious involvement of the State in private conduct [can] be attributed its true significance.’ Burton v. Wilmington Parking Auth., 365 U.S. 715, 722 (1961)

Diversity jurisdiction.

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

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

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

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

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

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

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

Rooker-Feldman doctrine

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

Aidan Kearney’s blog is a weapon.

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

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

Sua sponte dismissal is inappropriate.

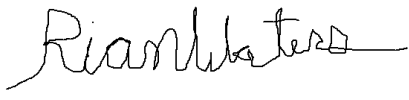
Especially in a case where the oppositions filed belied the courts arguments, and I have “expended considerable money and effort over the [last seven] months bringing [my] case to trial. To dismiss [my] case under a section of the U.S. Code entitled ‘Proceedings in forma pauperis’ after such a long stretch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

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

CONCLUSION

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

Respectfully submitted by:

Pro Se Rian Waters  5/13/2021
199 Allen ST. E. Longmeadow MA 01028
watersrian@gmail.com
(530) 739-8951

1 KEKER, VAN NEST & PETERS LLP
MATAN SHACHAM – Cal Bar # 262348
2 mshacham@keker.com
(admitted pro hac vice)
3 ERICA S. MIRANDA – Cal Bar # 325188
emiranda@keker.com
4 (admitted pro hac vice)
633 Battery Street
5 San Francisco, CA 94111-1809
Telephone: 415 391 5400
6 Facsimile: 415 397 7188

7 KIERNAN, TREBACH LLP
JOSEPH ARONSON (BBO#022070)
8 jaronson@kiernantrebach.com
40 Court Street, 3rd Floor
9 Boston, MA 02108
Telephone: 617 426 3900
10 Facsimile: 617 426 0380

11 Attorneys for Defendant FACEBOOK, INC.

12 UNITED STATES DISTRICT COURT

13 DISTRICT OF MASSACHUSETTS

14 RIAN WATERS,

15 Plaintiff,

16 v.

17 FACEBOOK INC., GOOGLE LLC.,
OFFICER JEREMY HALEY, AIDAN
18 KEARNEY, KATHERINE PETER,
SPRINGFIELD POLICE, DR. MARTHA
19 SMITH-BLACKMORE, WILLIAM
HIGGINS, MAURA HEALEY, JOHN DOES
20 1-10,

21 Defendant.

Case No. 3:20-CV-30168 MGM

**OPPOSITION TO PLAINTIFF RIAN
WATERS'S MOTION TO ALTER OR
AMEND THE JUDGMENT PURSUANT
TO FEDERAL RULE OF CIVIL
PROCEDURE 59(E)**

Judge: Hon. Mark G. Mastroianni

Date Filed: October 26, 2020

Trial Date: None Set

TABLE OF CONTENTS

Page No.

I.	INTRODUCTION	1
II.	PROCEDURAL HISTORY.....	1
III.	LEGAL STANDARD.....	2
IV.	ARGUMENT	3
A.	The Court properly found that Plaintiff's conclusory assertions of conspiracy were not supported by sufficient factual allegations.	3
B.	The Court lacks diversity jurisdiction over Plaintiff's state law claims because he, Kearney, and Peter are citizens of Massachusetts.	5
C.	The Court properly denied Plaintiff's motions for injunctive relief because they are moot, and he has no likelihood of succeeding on the merits.	6
D.	The Court was required to dismiss this action once it concluded that Plaintiff failed to state a claim upon which relief may be granted.	6
V.	CONCLUSION.....	7

Page(s)

<i>Adickes v. S.H. Kress & Co.,</i> 398 U.S. 144 (1970).....	4
<i>Amatucci v. Town of Wolfeboro, NH,</i> 2019 WL 11025876 (1st Cir. Dec. 6, 2019)	6
<i>Ashcroft v. Iqbal,</i> 556 U.S. 662 (2009).....	3, 4
<i>Caribbean Mgmt. Grp., Inc. v. Erikon LLC,</i> 966 F.3d 35 (1st Cir. 2020).....	2, 3
<i>Caterpillar Inc. v. Lewis,</i> 519 U.S. 61 (1996).....	5
<i>Day v. State,</i> 2020 WL 4192074 (1st Cir. Mar. 24, 2020)	6
<i>Feeney v. Corr. Med. Servs., Inc.,</i> 464 F.3d 158 (1st Cir. 2006).....	6
<i>Gabriel v. Preble,</i> 396 F.3d 10 (1st Cir. 2005).....	5
<i>Hosseini v. Cap. One, N.A.,</i> 217 F. Supp. 3d 441 (D. Mass. 2016)	6
<i>Linardon v. Castillo,</i> 2019 WL 3804693 (D. Mass. Aug. 12, 2019)	6
<i>Maymi v. Puerto Rico Ports Auth.,</i> 515 F.3d 20 (1st Cir. 2008).....	4
<i>New Comm Wireless Servs., Inc. v. SprintCom, Inc.,</i> 287 F.3d 1 (1st Cir. 2002).....	6
<i>Newell v. United States,</i> 2014 WL 2945967 (D. Mass. June 26, 2014)	6
<i>O'Rourke v. Hampshire Council of Governments,</i> 121 F. Supp. 3d 264 (D. Mass. 2015)	4
<i>Palmer v. Champion Mortg.,</i> 465 F.3d 24 (1st Cir. 2006).....	3

1	<i>Papadopoulos v. United States Gov't, FBI,</i>	
2	2020 WL 8513586 (1st Cir. Oct. 30, 2020)	6
3	<i>Ragnar v. Morrissey,</i>	
4	630 F. Supp. 2d 111 (D. Mass. 2009)	6
5	<i>Reichert v. Abbott,</i>	
6	2020 WL 5588647 (1st Cir. June 8, 2020)	6
7	<i>Rose v. Sununu,</i>	
8	2020 WL 6472396 (1st Cir. June 8, 2020)	6
9	<i>Silva v. Clarke,</i>	
10	603 F. Supp. 2d 248 (D. Mass. 2009)	6

Statutes

11	18 U.S.C. § 1962	5
12	28 U.S.C. § 1332	5
13	28 U.S.C. § 1915	2, 6
14	42 U.S.C. § 1983	3, 4
15	42 U.S.C. § 1985	3, 4
16	42 U.S.C. § 1986	3, 4

Other Authorities

17	Federal Rule of Civil Procedure 59	1, 2
----	--	------

Defendant Facebook, Inc. (“Facebook”) opposes Plaintiff Rian Waters’s Motion to Alter or Amend the Judgment Pursuant to Federal Rule of Civil Procedure 59(e).¹

I. INTRODUCTION

Pro se plaintiff Rian Waters alleges that Defendants Aidan Kearney, Katherine Peters, and other associated with Kearney’s Turtleboy Sports online persona have engaged in various acts of wrongdoing against him, including posting hurtful and harassing statements about him on several online forums. He alleges this personal dispute with Kearney morphed into a far-reaching conspiracy involving Massachusetts Superior Court judges, the Springfield Police Department, his public defender, and even the Massachusetts Attorney General. Plaintiff attempts to lump Facebook into this alleged conspiracy because Kearney and some of his followers post on Facebook’s online platform. After five iterations of Plaintiff’s complaint, the Court dismissed his action with prejudice, concluding that Plaintiff failed to allege a conspiracy between Facebook and the individuals posting the hurtful and harassing statements about him.

Now, Plaintiff asks the Court to reconsider that dismissal and amend its judgment, arguing that the Court misapprehended the law. To the contrary, the Court properly applied well-settled law, and Plaintiff fails to establish that he is entitled to the extraordinary relief he requests. For the reasons detailed below, the Court should deny Plaintiff’s Motion in its entirety.

II. PROCEDURAL HISTORY

On October 26, 2020 Plaintiff filed his verified Complaint against Facebook, Google LLC, Officer Jeremy Haley, Aidan Kearney, Katherine Peter, Springfield Police, Dr. Martha Smith-Blackmore, William Higgins, Massachusetts Attorney General Maura Healey, and Does 1-10.² The Court approved his motion to proceed *in forma pauperis*.³ Since filing his Complaint, Plaintiff has filed a First Amended Complaint⁴ and the following motions: (1) two motions for a

¹ Dkt. 91; Dkt. 91-1 (“Motion”).

² Dkt. 1.

³ Dkt. 8.

⁴ Dkt. 41.

temporary restraining order against Facebook;⁵ (2) three motions to amend his complaint;⁶ (3) a motion for declaratory judgment;⁷ (4) a motion to partially stay the proceedings;⁸ (5) a motion to file an oversized brief;⁹ (5) two motions for an extension of time to oppose Defendants' motions to dismiss;¹⁰ (6) a motion for an order governing extrajudicial statements;¹¹ and (7) an emergency motion for a subpoena.¹²

The Court denied Plaintiff's first motion for a temporary restraining order¹³ and granted his request for additional time to oppose Defendants' motions to dismiss.¹⁴ On May 11, 2021, the Court granted Plaintiff's third motion for leave to file a second amended complaint, deemed the proposed SAC filed, dismissed the SAC with prejudice under Section 1915(e)(2)(B) of Title 28 of the United States Code, and denied Plaintiff's remaining motions as moot.¹⁵ Two days later, Plaintiff filed this Motion.¹⁶

III. LEGAL STANDARD

Federal Rule of Civil Procedure 59(e) provides that a party may file "[a] motion to alter or amend a judgment . . . no later than 28 days after the entry of the judgment." Granting a motion to alter or amend a judgment, commonly referred to as a motion for reconsideration,¹⁷ is "an

⁵ Dkt. 4, 17.

⁶ Dkts. 64, 72, 81. Plaintiff eventually withdrew the motions for leave to amend at docket numbers 64 and 72. In support of his final motion for leave to amend his complaint, Plaintiff filed a "Third Proposed Second Amended Verified Complaint." ("SAC," Dkt. 81-1.)

⁷ Dkt. 75.

⁸ Dkt. 42.

⁹ Dkt. 61.

¹⁰ Dkts. 67, 69.

¹¹ Dkt. 71.

¹² Dkt. 85.

¹³ Dkt. 11.

¹⁴ Dkt. 58.

¹⁵ Dkt. 89 ("May 11 Order"); Dkt. 90 ("Judgment").

¹⁶ Dkt. 91; Dkt. 91-1 ("Motion").

¹⁷ *Caribbean Mgmt. Grp., Inc. v. Erikon LLC*, 966 F.3d 35, 39 (1st Cir. 2020).

extraordinary remedy which should be used sparingly.”¹⁸ To prevail on a motion for reconsideration, a moving party “‘must demonstrate either that new and important evidence, previously unavailable, has surfaced or that the original judgment was premised on a manifest error of law or fact.’”¹⁹ Without showing that “the court has misapprehended some material fact or point of law, such a motion is normally not a promising vehicle for revisiting a party's case and rearguing theories previously advanced and rejected.”²⁰

IV. ARGUMENT

Plaintiff's Motion identified no manifest error of law or fact that justifies revisiting the Court's May 11 Order and Judgment dismissing his action with prejudice. Rather, Plaintiff simply disagrees with the Court's analysis and recycles the same theories the Court rejected in dismissing his case.

A. The Court properly found that Plaintiff's conclusory assertions of conspiracy were not supported by sufficient factual allegations.

Plaintiff's claim against Facebook under 42 U.S.C. § 1986 requires that Plaintiff sufficiently allege a conspiratorial agreement.²¹ So, too, does his theory of liability under 42 U.S.C. § 1983.²² In order to plausibly allege a conspiratorial agreement, Plaintiff was required to allege more than “[t]hreadbare recitals of the elements” of his claim, which are properly disregarded as “no more than conclusions[.]”²³ Put differently, Plaintiff was required to allege “sufficient factual matter” that, if accepted as true, would support a plausible inference that the

¹⁸ *Palmer v. Champion Mortg.*, 465 F.3d 24, 30 (1st Cir. 2006) (quoting 11 Charles Alan Wright et al., *Federal Practice and Procedure* § 2810.1 (2d ed. 1995)).

¹⁹ *Caribbean Mgmt.*, 966 F.3d at 44–45 (quoting *Ira Green, Inc. v. Military Sales & Serv. Co.*, 775 F.3d 12, 28 (1st Cir. 2014)).

²⁰ *Palmer*, 465 F.3d at 30 (citing *See In re Sun Pipe Line Co.*, 831 F.2d 22, 24–25 (1st Cir. 1987)).

²¹ See SAC ¶¶ 88–96 (alleging Facebook violated 42 U.S.C. § 1986 because it supposedly neglected to prevent a conspiracy to interfere with a federal court proceeding under 42 U.S.C. § 1985(2)).

²² See *id.* ¶¶ 150–166 (alleging Facebook violated 42 U.S.C. § 1983); see also Motion at 3–4 (arguing that Facebook acted under the color of law because Kearney conspired with state officials and used Facebook's platform).

²³ *Ashcroft v. Iqbal*, 556 U.S. 662, 678–79 (2009).

Defendants entered into some conspiratorial agreement.²⁴

The Court correctly concluded that Plaintiff failed to allege sufficient facts to support a conclusion that Defendants entered into conspiratorial agreements. **First**, the Court properly concluded that Plaintiff failed to allege facts sufficient to infer a conspiratorial agreement to violate 42 U.S.C. § 1985.²⁵ Paragraph 74 of the SAC alleges that Kearney and others “conspired using secret groups” on various social media platforms, and Plaintiff insists that this satisfies his pleading burden.²⁶ But this allegation is nothing more than a legal conclusion, unadorned by any *facts* that could render an inference of conspiracy plausible. Notably, Plaintiff doesn’t allege *what* those individuals agreed to do. Without sufficiently alleging an underlying conspiracy, Plaintiff *cannot* state a claim against Facebook under Section 1986 for not preventing his alleged harm.²⁷ Moreover, the Court assumed Plaintiff’s factual allegations to be true and still found the SAC failed to “adequately allege” that Facebook knew of any Section 1985 conspiracy and refused to prevent it.²⁸

Second, the Court properly found the SAC does not allege that Facebook’s conduct is properly attributable to the state such that Facebook could be liable for claims under 42 U.S.C. § 1983.²⁹ Plaintiff’s argument that *Adickes v. S.H. Kress & Co.*³⁰ somehow suggests that the Court misapprehended the law is misguided. The Court’s May 11 Order does not reject long-established doctrine that a private citizen who conspires with state officials acts under color of law. Rather, the Court’s finding that Facebook’s alleged conduct is not “fairly attributable” to the state impliedly concludes that Plaintiff failed to allege facts sufficient to support an inference that

²⁴ *Id.* at 678.

²⁵ See May 11 Order at 3; *see also O’Rourke v. Hampshire Council of Governments*, 121 F. Supp. 3d 264, 273 (D. Mass. 2015) (citing *Nieves v. McSweeney*, 241 F.3d 46, 53 (1st Cir. 2001)).

²⁶ See Motion at 5.

²⁷ *Maymi v. Puerto Rico Ports Auth.*, 515 F.3d 20, 31 (1st Cir. 2008).

²⁸ May 11 Order at 2 (“The court accepts as true all well-plead allegations in the Second Amended Complaint, drawing reasonable inferences in Plaintiff’s favor”); *see also id.* at 3 (“Nor does Plaintiff *adequately* allege a claim against . . . Facebook . . . for knowing about a Section 1985 conspiracy and refusing to prevent it”) (*emphasis added*).)

²⁹ May 11 Order at 2–3.

³⁰ 398 U.S. 144 (1970).

Facebook conspired with any state official. This conclusion is unassailable, as the SAC does not allege that Facebook has a connection to any state official.

Accordingly, the Court’s analysis of Plaintiff’s federal law claims against Facebook contains no manifest error of law or fact.³¹ The Court should not disturb its well-reasoned conclusion that Plaintiff failed to state his federal law claims against Facebook.

B. The Court lacks diversity jurisdiction over Plaintiff’s state law claims because he, Kearney, and Peter are citizens of Massachusetts.

Plaintiff mistakenly asserts that the Court “said nothing about diversity jurisdiction,” his alternative basis for the Court to reach his state law claims.³² But the Court did reach this issue, correctly holding that it “lacks diversity jurisdiction pursuant to 28 U.S.C. § 1332.”³³ Moreover, Plaintiff’s assertion that the Court can invoke diversity jurisdiction to adjudicate his pendant state law claims is simply wrong. For a district court to have original jurisdiction over a state law claim, the amount in controversy must exceed \$75,000, and the matter must be between citizens of different states.³⁴ Diversity jurisdiction requires that the parties be completely diverse.³⁵ Complete diversity of citizenship exists “when no plaintiff is a citizen of the same state as any defendant.”³⁶ Plaintiff, Kearney, and Peter are all citizens of Massachusetts.³⁷ Therefore, this Court lacks diversity jurisdiction over Plaintiff’s state law claims.

³¹ Plaintiff quarrels with the Court’s characterization of Kearney’s blog posts in its analysis finding that that Plaintiff did not sufficiently allege any predicate acts to state his claim against Kearney under 18 U.S.C. § 1962(c). Motion at 7–8; May 11 Order at 3–4. But Plaintiff’s Motion does not contest the Court’s conclusion that Plaintiff failed to allege any agreement among Defendants to support his claim under 18 U.S.C. § 1962(d) for a conspiracy to violate the Racketeer Influenced and Corrupt Organization Act (“RICO”). Thus, Facebook does not address Plaintiff’s arguments concerning the nature of Kearney’s blog posts.

³² Motion at 4.

³³ May 11 Order at 4 n.3.

³⁴ 28 U.S.C. § 1332(a)(1).

³⁵ *Caterpillar Inc. v. Lewis*, 519 U.S. 61, 68 (1996).

³⁶ *Gabriel v. Preble*, 396 F.3d 10, 13 (1st Cir. 2005) (citing *Strawbridge v. Curtiss*, 7 U.S. 267, 267 (1806); *Am. Fiber & Finishing, Inc. v. Tyco Healthcare Group, LP*, 362 F.3d 136, 139 (1st Cir. 2004)).

³⁷ SAC ¶¶ 7, 13–14.

C. The Court properly denied Plaintiff's motions for injunctive relief because they are moot, and he has no likelihood of succeeding on the merits.

Plaintiff also mistakenly contends that his motions for injunctive relief are not moot upon dismissal of his SAC. Without an operative complaint, there is no action for which the Court can grant a preliminary injunction: The request for injunctive relief is therefore moot.³⁸ Moreover, if Plaintiff cannot allege sufficient facts that if true entitle him to relief, he certainly cannot establish that he is likely to succeed on the merits of his action.³⁹

D. The Court was required to dismiss this action once it concluded that Plaintiff failed to state a claim upon which relief may be granted.

Plaintiff asserts that the Court erred by *sua sponte* dismissing the SAC.⁴⁰ In a proceeding filed *in forma pauperis*, “the [C]ourt *shall dismiss the case at any time* if the court determines that . . . the action . . . (i) is frivolous or malicious [or] (ii) fails to state a claim upon which relief may be granted[.]”⁴¹ This statute “authorizes a federal court, *sua sponte*, to dismiss [an *in forma pauperis*] action if the court determines that it fails to state a claim on which relief may be granted.”⁴² Courts routinely dismiss *sua sponte* complaints filed *in forma pauperis* at the screening stage.⁴³

Plaintiff also argues that he has not been fairly or “fully heard.” This is simply untrue. Plaintiff has filed over ten motions and at least five version of his complaint since filing this

³⁸ *Silva v. Clarke*, 603 F. Supp. 2d 248, 251 (D. Mass. 2009) (“Because [the plaintiff’s] complaint fails to state a claim upon which relief can be granted his case will be dismissed and his motion for a preliminary injunction will be rendered moot”).

³⁹ *See, e.g., New Comm Wireless Servs., Inc. v. SprintCom, Inc.*, 287 F.3d 1, 9 (1st Cir. 2002) (likelihood of success on the merits is the “sine qua non” of a preliminary injunction); *see also Linardon v. Castillo*, 2019 WL 3804693, at *3 (D. Mass. Aug. 12, 2019) (finding that a plaintiff who fails to state a claim cannot demonstrate a likelihood of success on the merits); *Hosseini v. Cap. One, N.A.*, 217 F. Supp. 3d 441, 455 (D. Mass. 2016) (same); *Newell v. United States*, 2014 WL 2945967, at *3–4 (D. Mass. June 26, 2014) (same); *Ragnar v. Morrissey*, 630 F. Supp. 2d 111, 114 (D. Mass. 2009) (same).

⁴⁰ Motion at 8.

⁴¹ 28 U.S.C. § 1915(e)(2)(B)(i)-(ii).

⁴² *Feeney v. Corr. Med. Servs., Inc.*, 464 F.3d 158, 161 fn. 3 (1st Cir. 2006).

⁴³ *See, e.g., Papadopoulos v. United States Gov't, FBI*, 2020 WL 8513586, at *1 (1st Cir. Oct. 30, 2020); *Reichert v. Abbott*, 2020 WL 5588647, at *1 (1st Cir. June 8, 2020); *Rose v. Sununu*, 2020 WL 6472396, at *1 (1st Cir. June 8, 2020); *Day v. State*, 2020 WL 4192074, at *1 (1st Cir. Mar. 24, 2020); *Amatucci v. Town of Wolfeboro, NH*, 2019 WL 11025876, at *1 (1st Cir. Dec. 6, 2019).

1 action in November 2020.⁴⁴ Yet he still has not stated a claim. The Court allowed Plaintiff every
2 opportunity to be heard and properly dismissed this action.

3 **V. CONCLUSION**

4 For the foregoing reasons, Facebook respectfully requests that the Court deny Plaintiff's
5 Motion in its entirety.

8 Dated: May 26, 2021

KEKER, VAN NEST & PETERS LLP

10 KIERNAN, TREBACH LLP
11 JOSEPH ARONSON (BBO#022070)
12 jaronson@kiernantrebach.com
13 40 Court Street, 3rd Floor
14 Boston, MA 02108
15 Telephone: 617 426 3900
16 Facsimile: 617 426 0380

By: /s/ Erica S. Miranda
MATAN SHACHAM - Cal Bar # 262348
(admitted pro hac vice)
ERICA S. MIRANDA - Cal Bar # 325188
(admitted pro hac vice)
633 Battery Street
San Francisco, CA 94111-1809
Telephone: 415 391 5400
Facsimile: 415 397 7188

Attorneys for Defendant FACEBOOK,
INC.

27
28 ⁴⁴ See, *supra*, Part II.

CERTIFICATE OF SERVICE

I, Erica S. Miranda, hereby certify that on May 27, 2021 Defendant Facebook, Inc.'s Opposition to Plaintiff's Motion to Alter or Amend the Judgment Pursuant to Federal Rule of Civil Procedure 59(e) was filed through the ECF system and was sent electronically to the registered participants as identified in the notice of electronic filing (NEF). A copy of the foregoing was served upon Plaintiff Rian Waters by email and by First Class United States Mail to Rian Waters at 199 Allen Street, E. Longmeadow, MA 01116.

Dated: May 27, 2021

/s/ Erica S. Miranda

ERICA S. MIRANDA

Counsel for Defendant Facebook, Inc.

		Inc.. (Miranda, Erica) (Entered: 05/27/2021)
07/22/2021	93	Judge Mark G. Mastroianni: ELECTRONIC ORDER entered denying 91 Plaintiff's Motion to Alter or Amend the Judgment Pursuant to Rule 59(e). A motion to alter or amend a judgment under Federal Rule of Civil Procedure 59(e) is "an extraordinary remedy which should be used sparingly." <i>See</i> Charles Alan Wright, et al., 11 Federal Practice and Procedure § 2810.1 (3d ed. Apr. 2021). "To obtain relief, the movant must demonstrate that newly discovered evidence (not previously available) has come to light or that the rendering court committed a manifest error of law." <i>Palmer v. Champion Mortgage</i>, 465 F.3d 24, 30 (1st Cir. 2006) (denying motion). A Rule 59(e) motion "may not be used to relitigate old matters, [or] to raise arguments." Federal Practice and Procedure § 2810.1 (internal citations omitted). Plaintiff attempts to do both in his Rule 59(e) motion. After reviewing its May 11, 2021 order (Dkt. No. 89), Plaintiff's memorandum (Dkt. No. 91-1), and Defendant Facebook's opposition (Dkt. No. 92), the court does not find any basis to alter or amend the judgment in this case. The clerk of court is ordered to close this case. (Lindsay, Maurice) (Entered: 07/23/2021)
07/29/2021	94	NOTICE OF APPEAL as to 90 Order Dismissing Case, 93 Order on Motion to Set Aside Judgment,,,,, 89 Order on Motion to Dismiss for Failure to State a Claim,,,,,, Order on Motion for Extension of Time to Answer,,, Order on Motion to Stay,,,,,,,,,,,,, Order on Motion to Dismiss/Lack of Jurisdiction,,, Order on Motion for Leave to File,,,,,,,,,,,,,, Order on Motion for Injunctive Relief,,, Order on Motion to Amend,,,,,, Order on Motion for Declaratory Judgment,,, Order on Motion for Discovery,,, Order on Motion for TRO,, by Rian G. Waters NOTICE TO COUNSEL: A Transcript Report/Order Form, which can be downloaded from the First Circuit Court of Appeals web site at http://www.ca1.uscourts.gov MUST be completed and submitted to the Court of Appeals. Counsel shall register for a First Circuit CM/ECF Appellate Filer Account at http://pacer.psc.uscourts.gov/cmecf. Counsel shall also review the First Circuit requirements for electronic filing by visiting the CM/ECF Information section at http://www.ca1.uscourts.gov/cmecf. US District Court Clerk to deliver official record to Court of Appeals by 8/18/2021. (Waters, Rian) (Entered: 07/29/2021)
07/30/2021	95	Certified and Transmitted Abbreviated Electronic Record on Appeal to US Court of Appeals re 94 Notice of Appeal. (Paine, Matthew) (Entered: 07/30/2021)
07/30/2021	96	USCA Case Number 21-1582 for 94 Notice of Appeal, filed by Rian G. Waters. (Paine, Matthew) (Entered: 07/30/2021)
08/04/2021	97	USCA Appeal Fees received \$ 505 receipt number SPR004654 re 94 Notice of Appeal filed by Rian G. Waters (Zamorski, Michael) (Entered: 08/04/2021)
09/19/2021	98	MOTION for Leave to File Excess Pages by Rian G. Waters. (Attachments: # 1 Rule 60b Motion, # 2 Rule 60b Memo, # 3 Rule 60b Affidavit)(Waters, Rian) (Entered: 09/19/2021)
10/12/2021	99	Judge Mark G. Mastroianni: ELECTRONIC ORDER entered ALLOWING IN PART AND DENYING IN PART 98 Plaintiff's Rule 60(b) Motion and Motion to File Excess Pages. The motion to file excess pages is allowed; the remainder of the motion is denied. On May 11, 2021, the court dismissed the Second Amended Complaint for failure to state a legal basis for relief. (Dkt. No. 89.) After moving for, and being denied reconsideration, Plaintiff appealed the dismissal. He now brings this motion to alter the judgment under Rule 60(b). (Dkt. No. 98, "Plf. Memo.") The court lacks jurisdiction to hear Plaintiff's Rule 60(b) motion because of his pending appeal. <i>See Small Justice LLC v. Xcentric Ventures LLC</i>, 2015 WL 5737135, at *2 (D. Mass. Sept. 30, 2015) (citing <i>Ahmed v. Rosenblatt</i>, 118 F.3d 886, 890 (1st Cir. 1997)). Because Plaintiff proceeds pro se, however, the court liberally construes his motion as one pursuant to Rule 62.1 for an indicative ruling on his Rule 60(b) motion: "If a timely motion is made for relief that the court lacks authority to grant because of an appeal that has been docketed and is pending, the court may: (1) defer considering the motion; (2) deny the motion; or (3) state either that it would grant the motion if the court of appeals remands for that purpose or that the motion raises a substantial issue." Fed. R. Civ. P. 62.1. The court has considered Plaintiff's bases for his Rule 60(b) motion and finds them without merit. Plaintiff's Rule 62.1 motion for an indicative ruling is therefore denied. <i>See Small Justice LLC</i>, 2015 WL 5737135, at *2. Rule 60(b) states that "[o]n motion and just terms, the court may relieve a party...

FBAPP149

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

RIAN WATERS,
Plaintiff

FACEBOOK INC., et al.,
Defendants

)
)
)
)
)
)
)

3:2020CV30168 - MGM

Plaintiff's Notice of Appeal

Notice is hereby given that I, Pro se plaintiff Rian Waters, hereby appeal to the United States Court of Appeals for the First Circuit from the final judgment and order (in its entirety) entered in this action on the day of , May 11th 2021. I also appeal the order denying the rule 59e motion entered on July 22nd 2020.

The reasons for appeal are numerous, but the court's decision to sua sponte dismiss the case **with prejudice**, and **without** any **notice** of the court's intention to do so, and then to prevent me from raising arguments on my first opportunity to do so, all while the court is aware the Defendants are hindering the presentation of my case is an oppressive denial of due process that should never again happen in America.

Respectfully submitted by:

Pro Se Rian Waters



7/29/2021

199 Allen ST. E. Longmeadow MA 01028

watersrian@gmail.com (530) 739-8951

Certificate Of Service

I, Rian Waters, hereby certify that on 29th of July 2021, I served the above notice of appeal upon the attorneys of record by email, and I emailed Katherine Peter at Bristolturtlechick@gmail.com

Subscribed under the penalties of perjury.

Dated July 29th, 2021



**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

RIAN WATERS,
Plaintiff

FACEBOOK INC., et al.,
Defendants

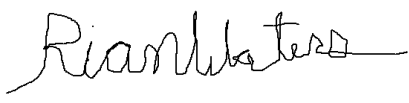
)
)
)
)
)
)
)

3:2020CV30168 - MGM

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

Pursuant to Federal Rule of Civil Procedure 60(b)(3) & 60(b)(6), Pro se plaintiff Rian Waters moves for the court to remove the judgment and reopen the case. The Defendants distributed content that prevented the full and fair presentation of my case, and due process requires that the court give me an opportunity to raise arguments in response to the court's sua sponte dismissal, because the decision was without notice and completely devoid of any merit. See also the attached Memorandum and affidavit.

Respectfully submitted by:

Pro Se Rian Waters  9/19/2021

199 Allen ST. E. Longmeadow MA 01028

watersrian@gmail.com

(530) 739-8951

Certificate Of Service

I, Rian Waters, hereby certify that on September 19th 2021, I served the attached Motion, Memorandum, and Affidavit on Facebook, Google, Aidan Kearney, and Katherine Peter by Electronic filing for attorneys of record, and by emailing: bristolturtlechick@gmail.com

Subscribed under the penalties of perjury.

/s/ Rian Waters

Dated September 19th 2021

**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**

Political Discrimination.....	26
RICO, State claims.....	30
Conclusion	30

Table of Authorities

This Court's Prior Cases

<i>Gillespie v. Cypher</i> , Civil Action 20-30050-MGM, at *1 (D. Mass. July 23, 2021).....	5
<u>Hall v. Hell's Angels U.S.A., Inc.</u> , Civil Action No. 19-30134-MGM, (D. Mass. Mar. 22, 2021).....	6
<u>Maddison v. City of Northampton</u> , Civil Action No. 20-30089-MGM, (D. Mass. Apr. 9, 2021).....	11
<u>Powell v. City of Pittsfield</u> , Civil Action No. 18-30146-MGM, (D. Mass. Dec. 14, 2020)6	
<i>Ramos v. City of Springfield</i> , Civil Action No. 17-30050-MGM, (D. Mass. Jan. 6, 2021)5,	11

Supreme Court Cases

<u>Adickes v. Kress Co.</u> , 398 U.S. 144, 152 (1970)	20
<u>Aikens v. Wisconsin</u> , 195 U.S. 194, 205-206 (1904)	12
<u>Austin v. United States</u> , 509 U.S. 602 (1993)	22
<u>Bell v. Maryland</u> , 378 U.S. 226	17, 23
<i>Bell v. Wolfish</i> , 441 U.S. 520, 537 (1979)	24
<u>Blum v. Yaretsky</u> , 457 U.S. 991, 1004 (1982)	19
<u>Board of Comm'rs of Bryan County v. Brown</u> , 520 U.S. 397, 409-10 (1997)	15

<u>Brentwood Acad. v. Tenn. Secondary Sch. Athletic Ass’n</u> , 531 U.S. 288 (2001)	16
<u>Buck v. Davis</u> , 137 S. Ct. 759, 777-78 (2017)	4
<u>Burton v. Wilmington Parking Auth.</u> , 365 U.S. 715, 722 (1961)	16
<u>Carey v. Piphus</u> , 435 U.S. 247, 263-64 (1978)	23
<u>Carpenters v. Scott</u> , 463 U.S. 825, 836-37 (1983)	27
<u>Collins v. Hardyman</u> , 341 U.S. 651, 662 (1951)	17
<u>Denton v. Hernandez</u> , 504 U.S. 25, 34, 112 S.Ct. 1728, 118 L.Ed.2d 340 (1992)	6
<u>Elonis v. United States</u> , 575 U.S. 723, 745 (2015)	4
<u>Erickson v. Pardus</u> , 551 U.S. 89, 94 (2007)	7
<u>Foucha v. Louisiana</u> , 504 U.S. 71, 80 (1992)	22
<u>Griffin v. Breckenridge</u> , 403 U.S. 88, 98 (1971)	17
<u>Haines v. Kerner</u> , 404 U.S. 519, 521 (1972)	7
<u>Holland v. Florida</u> , 560 U.S. 631, 650 (2010)	8
<u>Hormel v. Helvering</u> , 312 U.S. 552, 557, 61 S. Ct. 719, 721, 85 L. Ed. 1037 (1941)	5
<u>Jones v. Bock</u> , 549 U.S. 199, (2007)	7, 9
<u>Kennedy v. Mendoza-Martinez</u> , 372 U.S. 144, 167 (1963)	23
<u>Liljeberg v. Health Services Acquisition Corp.</u> , 486 U.S. 847, 864 (1988)	5
<u>Link v. Wabash R. Co.</u> , 370 U.S. 626, 627 (1962)	13
<u>Lomax v. Ortiz-Marquez</u> , 140 S. Ct. 1721, 1726 (2020)	6
<u>Mathews v. Eldridge</u> , 424 U.S. 319, 333 (1976)	24
<u>Neitzke v. Williams</u> , 490 U.S. 319, 331 n.9 (1989)	7
<u>Revere v. Massachusetts General Hospital</u> , 463 U.S. 239, 244 (1983)	22

<u>Shelley v. Kraemer</u> , 334 U.S. 1, 14 (1948)	18
<u>Smith v. Sperling</u> , 354 U.S. 91, 97 (1957)	9
<u>Tower v. Glover</u> , 467 U.S. 914 (1984)	20
<u>United States v. Price</u> , 383 U.S. 787, 799 (1966)	21, 23
<u>West v. Atkins</u> , 487 U.S. 42, 56 (1988)	21
<u>Wexford Health v. Garrett</u> , 140 S. Ct. 1611, 1612 (2020)	7
<u>Wisconsin v. Constantineau</u> , 400 U.S. 433, 437 (1971)	22
<u>Youngberg v. Romeo</u> , 457 U.S. 307, 323 (1982)	24
<u>Zinermon v. Burch</u> , 494 U.S. 113, 124 (1990)	18

1st Circuit

<u>Aetna Cas. Sur. Co. v. P B Autobody</u> , 43 F.3d 1546, 1562 (1st Cir. 1994).....	10, 13
<u>Alston v. Int'l Ass'n of Firefighters, Local 950, No. 20-1434</u> , (1st Cir. May 19, 2021) ...	12
<u>Bank Nat'l Tr. Co. v. Pike</u> , 916 F.3d 60, 67 (1st Cir. 2019).....	5
<u>Cotto v. U.S.</u> , 993 F.2d 274, 281 (1st Cir. 1993)	13
<u>Earle v. Benoit</u> , 850 F.2d 836, 843 (1st Cir. 1988)	12
<u>Estades-Negroni v. CPC Hospital San Juan Capestrano</u> , 412 F.3d 1, 5 (1st Cir. 2005) ...	19
<u>Feliciano-Hernández v. Pereira-Castillo</u> , 663 F.3d 527, 537 n.5 (1st Cir. 2011).....	9
<u>Fontanillas-Lopez v. Morell Bauzá Cartagena & Dapena, LLC</u> , 832 F.3d 50, 63 (1st Cir. 2016).....	3
<u>Fortin v. Darlington Little League, Inc.</u> , 514 F.2d 344, 347 (1st Cir. 1975).....	19
<u>Gagliardi v. Sullivan</u> , 513 F.3d 301, 308 (1st Cir. 2008).....	5

<u>Garayalde-Rijos v. Municipality of Carolina</u> , 747 F.3d 15, 24 (1st Cir. 2014)	7
<u>Gonzalez-Gonzalez v. U.S.</u> , 257 F.3d 31, 36-37 (1st Cir. 2001)	5
<u>Jarvis v. Vill. Gun Shop, Inc.</u> , 805 F.3d 1, 8 (1st Cir. 2015).....	16
<u>Karak v. Bursaw Oil Corp.</u> , 288 F.3d 15, 20-21 (“1st Cir. 2002)	3
<u>O'Rorke v. Porcaro (In re Porcaro)</u> , 547 B.R. 484, 487 (B.A.P. 1st Cir. 2016)	7
<u>Parker v. Landry</u> , 935 F.3d 9, 17 (1st Cir. 2019)	15
<u>Paul Revere Variable Annuity Insurance v. Zang</u> , 248 F.3d 1, 5 (1st Cir. 2001)	3
<u>Picciotto v. Zabin</u> , 399 F. App'x 604, 606 (1st Cir. 2010)	7
<u>Rodriguez-Garcia v. Davila</u> , 904 F.2d 90, 94 (1st Cir. 1990)	16, 20
<u>Romero-Barcelo v. Hernandez-Agosto</u> , 75 F.3d 23, 32 (1st Cir. 1996)	24
<u>Roosevelt Reo PR II Corp. v. Del Llano-Jiménez</u> , No. 17-1768, (1st Cir. Apr. 9, 2019) ..	3
<u>Sánchez v. Foley</u> , No. 18-1994, at *22 (1st Cir. Aug. 18, 2020)	12
<u>Sanchez v. Pereira-Castillo</u> , 590 F.3d 31, 50-51 (1st Cir. 2009).....	12
<u>Street v. Fair</u> , 918 F.2d 269, 272 (1st Cir. 1990).....	5
<u>Taylor v. American Chemistry Council</u> , 576 F.3d 16, 35 (1st Cir. 2009)	10, 14
<u>Wagenmann v. Adams</u> , 829 F.2d 196, 209-10 (1st Cir. 1987)	12, 16, 20
<u>West v. Bell Helicopter Textron, Inc.</u> , 803 F.3d 56, 67 (1st Cir. 2015).....	4

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)

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

FBAPP173

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.

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

18

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. Piphus, 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.” *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)

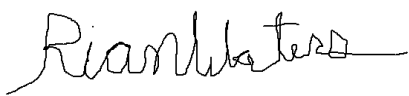
RICO, State claims

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:

Pro Se Rian Waters  9/19/2021

199 Allen ST. E. Longmeadow MA 01028

watersrian@gmail.com

(530) 739-8951

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

RIAN WATERS,
Plaintiff

FACEBOOK INC., et al.,
Defendants

3:2020CV30168 - MGM

Affidavit Of Rian Waters

1. On February 4th 2021 Katherine Peter publicly said that she did write the 2019 inflammatory articles that were published just before court hearings, but she claimed that Aidan Kearney edited the articles to make them more inflammatory, and that Aidan Kearney published the articles in her name.
2. According to Katherine Peter, Exhibit G of the SAC is a screen shot of Aidan Kearney using one of his many fake profiles in 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.”
3. Aidan Kearney still harasses Katherine Peter, in or around June 2021 Aidan inferred on Facebook and YouTube that Peter’s children had been molested.
4. I wrote and filed the attached motion as fast as I could.
5. I informed the Defendants on August 3rd by email that I intended to file a rule 60b motion.

Signed under the pains and penalties of perjury /s/ Rian Waters
dated 9/19/2021

		Inc.. (Miranda, Erica) (Entered: 05/27/2021)
07/22/2021	93	Judge Mark G. Mastroianni: ELECTRONIC ORDER entered denying 91 Plaintiff's Motion to Alter or Amend the Judgment Pursuant to Rule 59(e). A motion to alter or amend a judgment under Federal Rule of Civil Procedure 59(e) is "an extraordinary remedy which should be used sparingly." <i>See</i> Charles Alan Wright, et al., 11 Federal Practice and Procedure § 2810.1 (3d ed. Apr. 2021). "To obtain relief, the movant must demonstrate that newly discovered evidence (not previously available) has come to light or that the rendering court committed a manifest error of law." <i>Palmer v. Champion Mortgage</i>, 465 F.3d 24, 30 (1st Cir. 2006) (denying motion). A Rule 59(e) motion "may not be used to relitigate old matters, [or] to raise arguments." Federal Practice and Procedure § 2810.1 (internal citations omitted). Plaintiff attempts to do both in his Rule 59(e) motion. After reviewing its May 11, 2021 order (Dkt. No. 89), Plaintiff's memorandum (Dkt. No. 91-1), and Defendant Facebook's opposition (Dkt. No. 92), the court does not find any basis to alter or amend the judgment in this case. The clerk of court is ordered to close this case. (Lindsay, Maurice) (Entered: 07/23/2021)
07/29/2021	94	NOTICE OF APPEAL as to 90 Order Dismissing Case, 93 Order on Motion to Set Aside Judgment,,,,, 89 Order on Motion to Dismiss for Failure to State a Claim,,,,,, Order on Motion for Extension of Time to Answer,,, Order on Motion to Stay,,,,,,,,,,,,, Order on Motion to Dismiss/Lack of Jurisdiction,,, Order on Motion for Leave to File,,,,,,,,,,,,,, Order on Motion for Injunctive Relief,,, Order on Motion to Amend,,,,,, Order on Motion for Declaratory Judgment,,, Order on Motion for Discovery,,, Order on Motion for TRO,, by Rian G. Waters NOTICE TO COUNSEL: A Transcript Report/Order Form, which can be downloaded from the First Circuit Court of Appeals web site at http://www.ca1.uscourts.gov MUST be completed and submitted to the Court of Appeals. Counsel shall register for a First Circuit CM/ECF Appellate Filer Account at http://pacer.psc.uscourts.gov/cmecf. Counsel shall also review the First Circuit requirements for electronic filing by visiting the CM/ECF Information section at http://www.ca1.uscourts.gov/cmecf. US District Court Clerk to deliver official record to Court of Appeals by 8/18/2021. (Waters, Rian) (Entered: 07/29/2021)
07/30/2021	95	Certified and Transmitted Abbreviated Electronic Record on Appeal to US Court of Appeals re 94 Notice of Appeal. (Paine, Matthew) (Entered: 07/30/2021)
07/30/2021	96	USCA Case Number 21-1582 for 94 Notice of Appeal, filed by Rian G. Waters. (Paine, Matthew) (Entered: 07/30/2021)
08/04/2021	97	USCA Appeal Fees received \$ 505 receipt number SPR004654 re 94 Notice of Appeal filed by Rian G. Waters (Zamorski, Michael) (Entered: 08/04/2021)
09/19/2021	98	MOTION for Leave to File Excess Pages by Rian G. Waters. (Attachments: # 1 Rule 60b Motion, # 2 Rule 60b Memo, # 3 Rule 60b Affidavit)(Waters, Rian) (Entered: 09/19/2021)
10/12/2021	99	Judge Mark G. Mastroianni: ELECTRONIC ORDER entered ALLOWING IN PART AND DENYING IN PART 98 Plaintiff's Rule 60(b) Motion and Motion to File Excess Pages. The motion to file excess pages is allowed; the remainder of the motion is denied. On May 11, 2021, the court dismissed the Second Amended Complaint for failure to state a legal basis for relief. (Dkt. No. 89.) After moving for, and being denied reconsideration, Plaintiff appealed the dismissal. He now brings this motion to alter the judgment under Rule 60(b). (Dkt. No. 98, "Plf. Memo.") The court lacks jurisdiction to hear Plaintiff's Rule 60(b) motion because of his pending appeal. <i>See Small Justice LLC v. Xcentric Ventures LLC</i>, 2015 WL 5737135, at *2 (D. Mass. Sept. 30, 2015) (citing <i>Ahmed v. Rosenblatt</i>, 118 F.3d 886, 890 (1st Cir. 1997)). Because Plaintiff proceeds pro se, however, the court liberally construes his motion as one pursuant to Rule 62.1 for an indicative ruling on his Rule 60(b) motion: "If a timely motion is made for relief that the court lacks authority to grant because of an appeal that has been docketed and is pending, the court may: (1) defer considering the motion; (2) deny the motion; or (3) state either that it would grant the motion if the court of appeals remands for that purpose or that the motion raises a substantial issue." Fed. R. Civ. P. 62.1. The court has considered Plaintiff's bases for his Rule 60(b) motion and finds them without merit. Plaintiff's Rule 62.1 motion for an indicative ruling is therefore denied. <i>See Small Justice LLC</i>, 2015 WL 5737135, at *2. Rule 60(b) states that "[o]n motion and just terms, the court may relieve a party...

FBAPP192

from a final judgment for... (3) misconduct by an opposing party;... or (6) any other reason that justifies relief." Fed. R. Civ. P. 60(b). "[R]elief under Rule 60(b) is extraordinary in nature and... motions invoking that rule should be granted sparingly." *Karak v. Bursaw Oil Corp.*, 288 F.3d 15, 19 (1st Cir. 2002). "[A] party who seeks recourse under Rule 60(b) must persuade the trial court, at a bare minimum, that his motion is timely; that exceptional circumstances exist, favoring extraordinary relief; that if the judgment is set aside, he has the right stuff to mount a potentially meritorious claim or defense; and that no unfair prejudice will accrue to the opposing parties should the motion be granted." *Id.* (affirming denial of motion).

Plaintiff has shown neither "exceptional circumstances" nor the ability to "mount a potentially meritorious claim" were the judgment vacated and the case remanded. *See id.* Plaintiff argues that Defendant Aiden Kearney's "misconduct" under Rule 60(b)(3) was "distribut[ing] content to punish and discredit [Plaintiff's] first witnesses, which prevented [Plaintiff] from presenting all [of his] evidence, arguing [his] best case, or receiving representation." (Plf. Memo. at 4.) According to Plaintiff, Defendants Google's and Facebook's misconduct was enabling Defendant Kearney's unflattering posts. (*Id.* at 12-13.) Plaintiff made these same arguments in prior filings, and, in any event, they are simply incredible. *See Karak*, 288 F.3d at 21 (finding misconduct "did not inhibit [movant] from fully and fairly preparing his case"). Plaintiff also moves for relief under Rule 60(b)(6)'s catchall provision by rearguing his basis for state action under 42 U.S.C. § 1983. Plaintiff repeats arguments that the court has considered and dismissed, e.g., Defendant Kearney had "loyal officers in every police department in Massachusetts that sen[t] him stories;" Defendants Facebook and Google allowed Defendant Kearney to post publicly-available information about Plaintiff's criminal prosecution on Kearney's blog; and Defendants Facebook and Google "failed to train" employees to delete Kearney's posts. (Plf. Memo. at 10-16) (emphasis original). None of these arguments comes close to alleging a basis to attribute Defendants' behavior to the state under Section 1983. (*See* Dkt. 89 (May 11, 2021 order dismissing complaint).) To obtain relief under Rule 60(b), Plaintiff "must give the trial court reason to believe that vacating the judgment will not be an empty exercise." *Small Justice LLC*, 2015 WL 5737135, at *2 (internal quotation marks omitted). Plaintiff has not met his burden. *See id.* (denying Rule 62.1 motion "because the Plaintiffs have not established that the Rule 60(b) motion they wish to assert is potentially meritorious") (internal quotation marks omitted).

Plaintiff also argues that the court did not afford him "notice and an opportunity to be heard" to defend his claims. (Plf. Memo. at 5.) Plaintiff has had ample opportunity to be heard, having filed two amended complaints, briefing and affidavits in support of two motions for a temporary restraining order, an oversized opposition brief to Defendants' motion to dismiss, an oversized brief in support of the current motion, as well as additional miscellaneous filings, all of which the court has reviewed. In order to proceed to discovery and on to trial, a litigant bears the burden of alleging facts that would support a legal basis for relief. The court finds the Plaintiff has not done so.

For the foregoing reasons, Plaintiff's Rule 62.1 Motion for an indicative ruling on his Rule 60(b) Motion is denied. (Figueroa, Tamara) (Entered: 10/12/2021)

PACER Service Center			
Transaction Receipt			
11/11/2021 15:49:56			
PACER Login:	kv0011	Client Code:	keker
Description:	Docket Report	Search Criteria:	3:20-cv-30168-MGM
Billable Pages:	9	Cost:	0.90

**United States District Court
District of Massachusetts (Springfield)
CIVIL DOCKET FOR CASE #: 3:20-cv-30168-MGM**

Waters v. Facebook Inc. et al
Assigned to: Judge Mark G. Mastroianni
Case in other court: USCA - First Circuit, 21-01582
Cause: 42:1983 Civil Rights Act

Date Filed: 10/26/2020
Date Terminated: 05/11/2021
Jury Demand: None
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: Federal Question

Plaintiff

Pro Se Party Rian G. Waters

represented by **Rian G. Waters**
199 Allen Street
East Longmeadow, MA 01028
530-739-8951
Email: watersrian@gmail.com
PRO SE

V.

Defendant

Facebook Inc.

represented by **Erica Miranda**
Keker, Van Nest & Peters LLP
633 Battery Street
San Francisco, CA 94111-1809
415-391-5400
Fax: 415-397-7188
Email: emiranda@keker.com
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Matan Shacham
Keker, Van Nest & Peters LLP
633 Battery Street
San Francisco, CA 94111-1809
415-391-5400
Fax: 415-397-7188
Email: mshacham@keker.com
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Joseph H. Aronson
Bonner Kiernan Trebach & Crociata, LLP
40 Court Street
Third Floor
Boston, MA 02108
United Sta
617-426-3900
Fax: 617-426-0380
Email: jaronson@kiernantrebach.com
ATTORNEY TO BE NOTICED

FBAPP194

Defendant**Google LLC.**

represented by **Alan D. Rose , Sr.**
Rose Law Partners LLP
One Beacon Street
23rd Floor
Boston, MA 02108
617-536-0040
Fax: 617-536-4400
Email: adr@rose-law.net
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Jason B. Mollick
Wilson Sonsini Goodrich & Rosati, P.C.
1301 Avenue of the Americas
New York, NY 10019
(212) 497-7772
Email: jmollick@wsgr.com
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Laura B. Kirshenbaum
Rose Law Partners LLP
One Beacon Street, 23rd Flr.
Boston, MA 02108
617-536-0040
Email: lbk@rose-law.net
ATTORNEY TO BE NOTICED

Defendant**Aidan Kearney**

represented by **Ryan P. McLane**
McLane & McLane, LLC
269 South Westfield Street
Feeding Hills, MA 01030
413-789-7771
Email: ryan@mclanelaw.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant**Katherine Peter****Defendant****Jeremy Haley****Defendant****Martha Smith-Blackmore****Defendant****William Higgins****Defendant****Jim Dalton**

represented by **Andrew M. Batchelor**
Office of the Attorney General
1441 Main Street - Suite 1200
Springfield, MA 01103
413-523-7708

Email: andrew.batchelor@state.ma.us

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Defendant**Maura Healey**represented by **Andrew M. Batchelor**

(See above for address)

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Defendant**John Does (1-10)**

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

FBAPP196

11/19/2020	12	Copy re 11 Order on Motion for TRO,,, emailed to Rian Waters on 11/19/20 at watersrian@gmail.com (Lindsay, Maurice) (Entered: 11/19/2020)
11/25/2020	13	NOTICE of Appearance by Andrew M. Batchelor on behalf of Jim Dalton, Maura Healey (Batchelor, Andrew) (Entered: 11/25/2020)
11/25/2020	14	MOTION for Extension of Time to 1/8/2021 to File Answer <i>or Motion to Dismiss</i> by Jim Dalton, Maura Healey.(Batchelor, Andrew) (Entered: 11/25/2020)
12/01/2020	15	SUMMONS Returned Executed Facebook Inc. served on 11/18/2020, answer due 12/9/2020. (Zamorski, Michael) (Entered: 12/01/2020)
12/01/2020	16	SUMMONS Returned Executed Google LLC. served on 11/18/2020, answer due 12/9/2020. (Zamorski, Michael) (Entered: 12/01/2020)
12/01/2020	17	Plaintiff's Emergency Ex Parte MOTION for Temporary Restraining Order & Preliminary Injunction by Rian Waters.(Zamorski, Michael) (Entered: 12/01/2020)
12/01/2020	18	MEMORANDUM in Support re 17 MOTION for Temporary Restraining Order filed by Rian Waters. (Zamorski, Michael) (Entered: 12/01/2020)
12/01/2020	19	AFFIDAVIT in Support re 17 MOTION for Temporary Restraining Order filed by Rian Waters. (Attachments: # 1 Exhibit A, # 2 Exhibit B)(Zamorski, Michael) (Entered: 12/01/2020)
12/01/2020	20	NOTICE of Appearance by Joseph H. Aronson on behalf of Facebook Inc. (Aronson, Joseph) (Entered: 12/01/2020)
12/02/2020	21	MOTION for Leave to Appear Pro Hac Vice for admission of Matan Shacham Filing fee: \$ 200, receipt number 0101-8534980 by Facebook Inc..(Aronson, Joseph) (Entered: 12/02/2020)
12/02/2020	22	MOTION for Leave to Appear Pro Hac Vice for admission of Erica Miranda Filing fee: \$ 100, receipt number 0101-8535003 by Facebook Inc..(Aronson, Joseph) (Entered: 12/02/2020)
12/02/2020	23	CERTIFICATE OF CONSULTATION pursuant to LR 7.1 re 22 MOTION for Leave to Appear Pro Hac Vice for admission of Erica Miranda Filing fee: \$ 100, receipt number 0101-8535003 by Joseph H. Aronson on behalf of Facebook Inc.. (Aronson, Joseph) (Entered: 12/02/2020)
12/02/2020	24	CERTIFICATE OF CONSULTATION pursuant to LR 7.1 re 21 MOTION for Leave to Appear Pro Hac Vice for admission of Matan Shacham Filing fee: \$ 200, receipt number 0101-8534980 by Joseph H. Aronson on behalf of Facebook Inc.. (Aronson, Joseph) (Entered: 12/02/2020)
12/03/2020	25	STIPULATION <i>Jt Stipulation and Order to Extend Time for D Facebook to Answer or Move to Dismiss Complaint</i> by Facebook Inc.. (Aronson, Joseph) (Entered: 12/03/2020)
12/03/2020	26	NOTICE of Appearance by Alan D. Rose, Sr on behalf of Google LLC. (Rose, Alan) (Entered: 12/03/2020)
12/03/2020	27	NOTICE of Appearance by Laura B. Kirshenbaum on behalf of Google LLC. (Kirshenbaum, Laura) (Entered: 12/03/2020)
12/04/2020	28	CORPORATE DISCLOSURE STATEMENT by Google LLC. identifying Corporate Parent Alphabet Inc., Corporate Parent XXVI Holdings Inc. for Google LLC... (Kirshenbaum, Laura) (Entered: 12/04/2020)
12/04/2020	29	MOTION for Leave to Appear Pro Hac Vice for admission of Jason B. Mollick Filing fee: \$ 100, receipt number 0101-8539597 by Google LLC.. (Attachments: # 1 Affidavit Certificate of Attorney Jason B. Mollick, # 2 Exhibit Certificate of Good Standing of Attorney Jason B. Mollick) (Kirshenbaum, Laura) (Entered: 12/04/2020)
12/04/2020	30	MEMORANDUM in Opposition re 17 MOTION for Temporary Restraining Order filed by Google LLC.. (Attachments: # 1 Exhibit A)(Kirshenbaum, Laura) (Entered: 12/04/2020)
12/08/2020	31	STIPULATION <i>and Proposed Order to Extend Time for Defendant Google LLC to Answer or Move to Dismiss the Complaint</i> by Google LLC.. (Kirshenbaum, Laura) (Entered: 12/08/2020)
12/09/2020	32	CORPORATE DISCLOSURE STATEMENT by Facebook Inc.. (Aronson, Joseph) (Entered: 12/09/2020)

12/11/2020	33	Opposition re 17 MOTION for Temporary Restraining Order filed by Facebook Inc.. (Aronson, Joseph) (Entered: 12/11/2020)
12/14/2020	34	CERTIFICATE OF SERVICE pursuant to LR 5.2 by Facebook Inc. . (Aronson, Joseph) (Entered: 12/14/2020)
12/14/2020	35	Judge Mark G. Mastroianni: ELECTRONIC ORDER entered granting 14 Defendants Attorney General Maura Healey and Lt. James Dalton's Motion for Extension of Time to Answer or Move to Dismiss the Complaint. In addition, in light of the stipulations filed at Dkt. Nos. 25 and 31, the deadline to file a response to Plaintiff's Complaint as to Defendants Facebook and Google also shall be extended to January 8, 2021. If Plaintiff amends his complaint before that date, all Defendants' responses shall be filed within 21 days of service of the amended complaint. (Lindsay, Maurice) (Entered: 12/14/2020)
01/08/2021	36	MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM by Google LLC.. (Attachments: # 1 Exhibit A)(Kirshenbaum, Laura) (Entered: 01/08/2021)
01/08/2021	37	MOTION to Dismiss by Facebook Inc..(Aronson, Joseph) (Entered: 01/08/2021)
01/08/2021	38	MEMORANDUM in Support re 37 MOTION to Dismiss filed by Facebook Inc.. (Aronson, Joseph) (Entered: 01/08/2021)
01/08/2021	39	CERTIFICATE OF CONSULTATION pursuant to LR 7.1 re 38 Memorandum in Support of Motion by Joseph H. Aronson on behalf of Facebook Inc.. (Aronson, Joseph) (Entered: 01/08/2021)
01/08/2021	40	Assented to MOTION for Extension of Time to 1/11/2021 to File Answer <i>or move to dismiss</i> by Jim Dalton, Maura Healey.(Batchelor, Andrew) (Entered: 01/08/2021)
01/11/2021	41	AMENDED COMPLAINT against All Defendants, filed by Rian Waters.(Zamorski, Michael) (Entered: 01/12/2021)
01/11/2021	42	MOTION to Partially Stay the Proceeding by Rian Waters.(Zamorski, Michael) (Entered: 01/12/2021)
01/11/2021	43	MOTION to Give Pro Se Plaintiff Rain Waters Access to the Computer Filing System by Rian Waters. (Zamorski, Michael) (Entered: 01/12/2021)
01/12/2021	44	Judge Mark G. Mastroianni: ELECTRONIC ORDER entered granting 21 Motion for Leave to Appear Pro Hac Vice Added Matan Shacham. Attorneys admitted Pro Hac Vice must register for electronic filing if the attorney does not already have an ECF account in this district. To register go to the Court website at www.mad.uscourts.gov. Select Case Information, then Electronic Filing (CM/ECF) and go to the CM/ECF Registration Form. (Figuroa, Tamara) (Entered: 01/12/2021)
01/12/2021	45	Judge Mark G. Mastroianni: ELECTRONIC ORDER entered granting 22 Motion for Leave to Appear Pro Hac Vice Added Erica Miranda. Attorneys admitted Pro Hac Vice must register for electronic filing if the attorney does not already have an ECF account in this district. To register go to the Court website at www.mad.uscourts.gov. Select Case Information, then Electronic Filing (CM/ECF) and go to the CM/ECF Registration Form. (Figuroa, Tamara) (Entered: 01/12/2021)
01/12/2021	46	Judge Mark G. Mastroianni: ELECTRONIC ORDER entered granting 29 Motion for Leave to Appear Pro Hac Vice Added Jason B. Mollick, Esq.. Attorneys admitted Pro Hac Vice must register for electronic filing if the attorney does not already have an ECF account in this district. To register go to the Court website at www.mad.uscourts.gov. Select Case Information, then Electronic Filing (CM/ECF) and go to the CM/ECF Registration Form. (Figuroa, Tamara) (Entered: 01/12/2021)
01/25/2021	47	MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM by Google LLC..(Kirshenbaum, Laura) (Entered: 01/25/2021)
01/25/2021	48	MEMORANDUM in Support re 47 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by Google LLC.. (Kirshenbaum, Laura) (Entered: 01/25/2021)
01/25/2021	49	MOTION to Dismiss <i>First Amended Complaint</i> by Facebook Inc..(Miranda, Erica) (Entered: 01/25/2021)
01/25/2021	50	MEMORANDUM in Support of 49 MOTION to Dismiss <i>First Amended Complaint</i> by Facebook Inc.. (Miranda, Erica) Modified on 1/26/2021 to correct the text to reflect the document that is being filed a Memorandum in support of the Motion to Dismiss, not a Motion to Dismiss. (Finn, Mary). Modified on 1/26/2021 to link to document 49 . (Finn, Mary). (Entered: 01/25/2021)

01/25/2021	51	CERTIFICATE OF CONSULTATION pursuant to LR 7.1 re 49 MOTION to Dismiss <i>First Amended Complaint</i> , 50 MOTION to Dismiss <i>First Amended Complaint First Amended Complaint</i> by Erica Miranda on behalf of Facebook Inc.. (Miranda, Erica) (Entered: 01/25/2021)
01/25/2021	52	MOTION to Dismiss , MOTION to Dismiss for Lack of Jurisdiction (Responses due by 2/8/2021) by Jim Dalton, Maura Healey.(Batchelor, Andrew) (Entered: 01/25/2021)
01/25/2021	53	MEMORANDUM in Support re 52 MOTION to Dismiss MOTION to Dismiss for Lack of Jurisdiction filed by Jim Dalton, Maura Healey. (Batchelor, Andrew) (Entered: 01/25/2021)
01/25/2021	54	Opposition re 42 MOTION to Stay filed by Jim Dalton, Maura Healey. (Batchelor, Andrew) (Entered: 01/25/2021)
02/02/2021	55	NOTICE of Appearance by Ryan P. McLane on behalf of Aidan Kearney (McLane, Ryan) (Entered: 02/02/2021)
02/04/2021	56	MOTION for Extension of Time to 02/12/2021 to File Response/Reply as to 49 MOTION to Dismiss <i>First Amended Complaint</i> , 47 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM by Rian Waters.(Zamorski, Michael) (Entered: 02/05/2021)
02/04/2021	57	SUMMONS Returned Executed Aidan Kearney served on 1/22/2021, answer due 2/12/2021. (Zamorski, Michael) (Entered: 02/05/2021)
02/08/2021	58	Judge Mark G. Mastroianni: ELECTRONIC ORDER entered granting 56 Plaintiffs Motion for Extra Time to Oppose Facebook and Googles Motions to Dismiss. Plaintiff's oppositions are due by February 12, 2021. (Lindsay, Maurice) (Entered: 02/08/2021)
02/08/2021	59	Judge Mark G. Mastroianni: ELECTRONIC ORDER entered granting 43 Motion to Give Pro Se Plaintiff Rian Waters Access to the Computer Filing System. Plaintiff is directed to follow up with the Clerk's Office. (Lindsay, Maurice) (Entered: 02/08/2021)
02/08/2021	60	Copy re 59 Order on Motion for Miscellaneous Relief, 58 Order on Motion for Extension of Time to File Response/Reply mailed to Rian Waters on 2/8/21. (Lindsay, Maurice) (Entered: 02/08/2021)
02/09/2021	61	MOTION for Leave for Oversized Opposition Briefs for Facebook and Google's Motions to Dismiss. by Rian Waters.(Zamorski, Michael) (Entered: 02/09/2021)
02/12/2021	62	MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM by Aidan Kearney.(McLane, Ryan) (Entered: 02/12/2021)
02/12/2021	63	MEMORANDUM in Support re 62 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by Aidan Kearney. (McLane, Ryan) (Entered: 02/12/2021)
02/22/2021	64	First MOTION for Leave to File <i>Second Amended Complaint</i> by Rian G. Waters. (Attachments: # 1 proposed second amended complaint, # 2 Exhibit, # 3 Exhibit, # 4 Exhibit, # 5 Exhibit, # 6 Exhibit, # 7 Exhibit, # 8 Exhibit, # 9 Exhibit)(Waters, Rian) (Entered: 02/22/2021)
02/22/2021	65	First Opposition re 47 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by Rian G. Waters. (Waters, Rian) (Entered: 02/22/2021)
02/22/2021	66	First Opposition re 49 MOTION to Dismiss <i>First Amended Complaint</i> filed by Rian G. Waters. (Waters, Rian) (Entered: 02/22/2021)
02/22/2021	67	Second MOTION for Extension of Time to 2/22/2021 to Oppose Google's and Facebooks motion's to dismiss <i>First Amended Complaint</i> by Rian G. Waters. (Attachments: # 1 Exhibit Exhibit A)(Waters, Rian) (Entered: 02/22/2021)
02/23/2021	68	First Opposition re 62 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by Rian G. Waters. (Waters, Rian) (Entered: 02/23/2021)
03/04/2021	69	MOTION for Extra Time to Oppose Google's Motion to Dismiss by Rian G. Waters. (Attachments: # 1 Exhibit A)(Zamorski, Michael) (Entered: 03/04/2021)
03/08/2021	70	Opposition re 64 First MOTION for Leave to File <i>Second Amended Complaint</i> filed by Google LLC.. (Kirshenbaum, Laura) (Entered: 03/08/2021)
03/09/2021	71	Second MOTION for Injunctive Relief <i>LOCAL RULE 83.2.2</i> by Rian G. Waters. (Attachments: # 1 Memorandum, # 2 Affidavit Affidavit)(Waters, Rian) (Entered: 03/09/2021)

FBAPP199

03/11/2021	72	Second MOTION to Amend 64 First MOTION for Leave to File <i>Second Amended Complaint</i> by Rian G. Waters. (Attachments: # 1 Third Amended Complaint)(Waters, Rian) (Entered: 03/11/2021)
03/15/2021	73	NOTICE by Rian G. Waters of <i>constitutional challenge</i> (Waters, Rian) (Entered: 03/15/2021)
03/15/2021	74	Note: Entry was filed in error removed Lindsay, Maurice). (Entered: 03/15/2021)
03/18/2021	75	First MOTION for Declaratory Judgment by Rian G. Waters. (Attachments: # 1 Memorandum, # 2 Affidavit)(Waters, Rian) (Entered: 03/18/2021)
03/22/2021	76	STIPULATION <i>And Proposed Order</i> by Facebook Inc.. (Aronson, Joseph) (Entered: 03/22/2021)
03/26/2021	77	Opposition re 75 First MOTION for Declaratory Judgment filed by Google LLC.. (Kirshenbaum, Laura) (Entered: 03/26/2021)
04/01/2021	78	NOTICE by Facebook Inc. (Aronson, Joseph) (Entered: 04/01/2021)
04/05/2021	79	NOTICE of Correction by court staff Removed Document filed in error on 4/6/2021 (Lindsay, Maurice). (Entered: 04/06/2021)
04/08/2021	80	SUMMONS Returned Executed Katherine Peter served on 3/30/2021, answer due 4/20/2021. (Waters, Rian) (Entered: 04/08/2021)
04/15/2021	81	Third MOTION to Amend 64 First MOTION for Leave to File <i>Second Amended Complaint</i> by Rian G. Waters. (Attachments: # 1 Proposed second amended complaint, # 2 Exhibit A, # 3 Exhibit B, # 4 Exhibit C, # 5 Exhibit D, # 6 Exhibit E, # 7 Exhibit F, # 8 Exhibit G, # 9 Exhibit H)(Waters, Rian) (Entered: 04/15/2021)
04/15/2021	82	Opposition re 81 Third MOTION to Amend 64 First MOTION for Leave to File <i>Second Amended Complaint</i> filed by Google LLC.. (Kirshenbaum, Laura) (Entered: 04/15/2021)
04/18/2021	83	First REPLY to Response to 75 First MOTION for Declaratory Judgment , 81 Third MOTION to Amend 64 First MOTION for Leave to File <i>Second Amended Complaint</i> filed by Rian G. Waters. (Attachments: # 1 Reply brief)(Waters, Rian) (Entered: 04/18/2021)
04/18/2021	84	Errata by Rian G. Waters to 83 Reply to Response to Motion, . (Waters, Rian) (Entered: 04/18/2021)
04/20/2021	85	First MOTION for Discovery <i>Subpoena</i> by Rian G. Waters.(Waters, Rian) (Entered: 04/20/2021)
05/04/2021	86	Opposition re 72 Second MOTION to Amend 64 First MOTION for Leave to File <i>Second Amended Complaint</i> , 64 First MOTION for Leave to File <i>Second Amended Complaint</i> , 81 Third MOTION to Amend 64 First MOTION for Leave to File <i>Second Amended Complaint</i> filed by Aidan Kearney. (McLane, Ryan) (Entered: 05/04/2021)
05/04/2021	87	Opposition re 85 First MOTION for Discovery <i>Subpoena</i> filed by Aidan Kearney. (McLane, Ryan) (Entered: 05/04/2021)
05/04/2021	88	First REPLY to Response to 85 First MOTION for Discovery <i>Subpoena</i> , 81 Third MOTION to Amend 64 First MOTION for Leave to File <i>Second Amended Complaint to Kearney's oppositions</i> filed by Rian G. Waters. (Attachments: # 1 Reply to Kearney's oppositions)(Waters, Rian) (Entered: 05/04/2021)
05/11/2021	89	Judge Mark G. Mastroianni: ORDER entered as follows: For the reasons stated, Plaintiffs Third Motion to Amend his First Motion to File a Second Amended Complaint is GRANTED; the Second Amended Complaint is DISMISSED WITH PREJUDICE; and the remaining motions are DENIED AS MOOT. The court certifies that an in forma pauperis appeal by Plaintiff from this dismissal would not be taken in good faith. See 28 U.S.C. § 1915(a)(3); see also Kersey v. Trump, No. 18-1056, 2018 WL 11303565, at *1 (1st Cir. Sept. 4, 2018) (affirming certification and denying IFP status for appeal). The Clerk of Court is ordered to close this case. See the attached order for complete details. (Lindsay, Maurice) (Entered: 05/11/2021)
05/11/2021	90	Judge Mark G. Mastroianni: ORDER entered. Order of Dismissal. (Lindsay, Maurice) (Entered: 05/11/2021)
05/13/2021	91	First MOTION to Set Aside Judgment <i>Rule 59e Alter or Amend</i> by Rian G. Waters. (Attachments: # 1 Memorandum)(Waters, Rian) (Entered: 05/13/2021)
05/27/2021	92	Opposition re 91 First MOTION to Set Aside Judgment <i>Rule 59e Alter or Amend</i> filed by Facebook

		Inc.. (Miranda, Erica) (Entered: 05/27/2021)
07/22/2021	93	Judge Mark G. Mastroianni: ELECTRONIC ORDER entered denying 91 Plaintiff's Motion to Alter or Amend the Judgment Pursuant to Rule 59(e). A motion to alter or amend a judgment under Federal Rule of Civil Procedure 59(e) is "an extraordinary remedy which should be used sparingly." <i>See</i> Charles Alan Wright, et al., 11 Federal Practice and Procedure § 2810.1 (3d ed. Apr. 2021). "To obtain relief, the movant must demonstrate that newly discovered evidence (not previously available) has come to light or that the rendering court committed a manifest error of law." <i>Palmer v. Champion Mortgage</i>, 465 F.3d 24, 30 (1st Cir. 2006) (denying motion). A Rule 59(e) motion "may not be used to relitigate old matters, [or] to raise arguments." Federal Practice and Procedure § 2810.1 (internal citations omitted). Plaintiff attempts to do both in his Rule 59(e) motion. After reviewing its May 11, 2021 order (Dkt. No. 89), Plaintiff's memorandum (Dkt. No. 91-1), and Defendant Facebook's opposition (Dkt. No. 92), the court does not find any basis to alter or amend the judgment in this case. The clerk of court is ordered to close this case. (Lindsay, Maurice) (Entered: 07/23/2021)
07/29/2021	94	NOTICE OF APPEAL as to 90 Order Dismissing Case, 93 Order on Motion to Set Aside Judgment,,,,, 89 Order on Motion to Dismiss for Failure to State a Claim,,,,,, Order on Motion for Extension of Time to Answer,,, Order on Motion to Stay,,,,,,,,,,,,, Order on Motion to Dismiss/Lack of Jurisdiction,,, Order on Motion for Leave to File,,,,,,,,,,,,,, Order on Motion for Injunctive Relief,,, Order on Motion to Amend,,,,,, Order on Motion for Declaratory Judgment,,, Order on Motion for Discovery,,, Order on Motion for TRO,, by Rian G. Waters NOTICE TO COUNSEL: A Transcript Report/Order Form, which can be downloaded from the First Circuit Court of Appeals web site at http://www.ca1.uscourts.gov MUST be completed and submitted to the Court of Appeals. Counsel shall register for a First Circuit CM/ECF Appellate Filer Account at http://pacer.psc.uscourts.gov/cmecf. Counsel shall also review the First Circuit requirements for electronic filing by visiting the CM/ECF Information section at http://www.ca1.uscourts.gov/cmecf. US District Court Clerk to deliver official record to Court of Appeals by 8/18/2021. (Waters, Rian) (Entered: 07/29/2021)
07/30/2021	95	Certified and Transmitted Abbreviated Electronic Record on Appeal to US Court of Appeals re 94 Notice of Appeal. (Paine, Matthew) (Entered: 07/30/2021)
07/30/2021	96	USCA Case Number 21-1582 for 94 Notice of Appeal, filed by Rian G. Waters. (Paine, Matthew) (Entered: 07/30/2021)
08/04/2021	97	USCA Appeal Fees received \$ 505 receipt number SPR004654 re 94 Notice of Appeal filed by Rian G. Waters (Zamorski, Michael) (Entered: 08/04/2021)
09/19/2021	98	MOTION for Leave to File Excess Pages by Rian G. Waters. (Attachments: # 1 Rule 60b Motion, # 2 Rule 60b Memo, # 3 Rule 60b Affidavit)(Waters, Rian) (Entered: 09/19/2021)
10/12/2021	99	Judge Mark G. Mastroianni: ELECTRONIC ORDER entered ALLOWING IN PART AND DENYING IN PART 98 Plaintiff's Rule 60(b) Motion and Motion to File Excess Pages. The motion to file excess pages is allowed; the remainder of the motion is denied. On May 11, 2021, the court dismissed the Second Amended Complaint for failure to state a legal basis for relief. (Dkt. No. 89.) After moving for, and being denied reconsideration, Plaintiff appealed the dismissal. He now brings this motion to alter the judgment under Rule 60(b). (Dkt. No. 98, "Plf. Memo.") The court lacks jurisdiction to hear Plaintiff's Rule 60(b) motion because of his pending appeal. <i>See Small Justice LLC v. Xcentric Ventures LLC</i>, 2015 WL 5737135, at *2 (D. Mass. Sept. 30, 2015) (citing <i>Ahmed v. Rosenblatt</i>, 118 F.3d 886, 890 (1st Cir. 1997)). Because Plaintiff proceeds pro se, however, the court liberally construes his motion as one pursuant to Rule 62.1 for an indicative ruling on his Rule 60(b) motion: "If a timely motion is made for relief that the court lacks authority to grant because of an appeal that has been docketed and is pending, the court may: (1) defer considering the motion; (2) deny the motion; or (3) state either that it would grant the motion if the court of appeals remands for that purpose or that the motion raises a substantial issue." Fed. R. Civ. P. 62.1. The court has considered Plaintiff's bases for his Rule 60(b) motion and finds them without merit. Plaintiff's Rule 62.1 motion for an indicative ruling is therefore denied. <i>See Small Justice LLC</i>, 2015 WL 5737135, at *2. Rule 60(b) states that "[o]n motion and just terms, the court may relieve a party...

FBAPP201

from a final judgment for... (3) misconduct by an opposing party;... or (6) any other reason that justifies relief." Fed. R. Civ. P. 60(b). "[R]elief under Rule 60(b) is extraordinary in nature and... motions invoking that rule should be granted sparingly." *Karak v. Bursaw Oil Corp.*, 288 F.3d 15, 19 (1st Cir. 2002). "[A] party who seeks recourse under Rule 60(b) must persuade the trial court, at a bare minimum, that his motion is timely; that exceptional circumstances exist, favoring extraordinary relief; that if the judgment is set aside, he has the right stuff to mount a potentially meritorious claim or defense; and that no unfair prejudice will accrue to the opposing parties should the motion be granted." *Id.* (affirming denial of motion).

Plaintiff has shown neither "exceptional circumstances" nor the ability to "mount a potentially meritorious claim" were the judgment vacated and the case remanded. *See id.* Plaintiff argues that Defendant Aiden Kearney's "misconduct" under Rule 60(b)(3) was "distribut[ing] content to punish and discredit [Plaintiff's] first witnesses, which prevented [Plaintiff] from presenting all [of his] evidence, arguing [his] best case, or receiving representation." (Plf. Memo. at 4.) According to Plaintiff, Defendants Google's and Facebook's misconduct was enabling Defendant Kearney's unflattering posts. (*Id.* at 12-13.) Plaintiff made these same arguments in prior filings, and, in any event, they are simply incredible. *See Karak*, 288 F.3d at 21 (finding misconduct "did not inhibit [movant] from fully and fairly preparing his case"). Plaintiff also moves for relief under Rule 60(b)(6)'s catchall provision by rearguing his basis for state action under 42 U.S.C. § 1983. Plaintiff repeats arguments that the court has considered and dismissed, e.g., Defendant Kearney had "loyal officers in every police department in Massachusetts that sen[t] him stories;" Defendants Facebook and Google allowed Defendant Kearney to post publicly-available information about Plaintiff's criminal prosecution on Kearney's blog; and Defendants Facebook and Google "failed to train" employees to delete Kearney's posts. (Plf. Memo. at 10-16) (emphasis original). None of these arguments comes close to alleging a basis to attribute Defendants' behavior to the state under Section 1983. (*See* Dkt. 89 (May 11, 2021 order dismissing complaint).) To obtain relief under Rule 60(b), Plaintiff "must give the trial court reason to believe that vacating the judgment will not be an empty exercise." *Small Justice LLC*, 2015 WL 5737135, at *2 (internal quotation marks omitted). Plaintiff has not met his burden. *See id.* (denying Rule 62.1 motion "because the Plaintiffs have not established that the Rule 60(b) motion they wish to assert is potentially meritorious") (internal quotation marks omitted).

Plaintiff also argues that the court did not afford him "notice and an opportunity to be heard" to defend his claims. (Plf. Memo. at 5.) Plaintiff has had ample opportunity to be heard, having filed two amended complaints, briefing and affidavits in support of two motions for a temporary restraining order, an oversized opposition brief to Defendants' motion to dismiss, an oversized brief in support of the current motion, as well as additional miscellaneous filings, all of which the court has reviewed. In order to proceed to discovery and on to trial, a litigant bears the burden of alleging facts that would support a legal basis for relief. The court finds the Plaintiff has not done so.

For the foregoing reasons, Plaintiff's Rule 62.1 Motion for an indicative ruling on his Rule 60(b) Motion is denied. (Figueroa, Tamara) (Entered: 10/12/2021)

PACER Service Center			
Transaction Receipt			
11/11/2021 15:49:56			
PACER Login:	kv0011	Client Code:	keker
Description:	Docket Report	Search Criteria:	3:20-cv-30168-MGM
Billable Pages:	9	Cost:	0.90

Rian G. Waters v. Facebook, Inc., et al.
United States Court of Appeal for the First Circuit
Case No. 21-1582

CERTIFICATE OF SERVICE

I hereby certify that on November 15, 2021 I electronically filed the foregoing document with the United States Court of Appeals for the First Circuit by using the CM/ECF system. I certify that the following parties or their counsel of record are registered as ECF Filers and that they will be served by the CM/ECF system:

Joseph Aronson Kiernan, Trebach LLP 40 Court Street, 3rd Floor Boston, MA 02108 jaronson@kiernantrebach.com	Jason B. Mollick Wilson, Sonsini, Goodrich & Rosati LLP 1301 Avenue of the Americas, 40th Flr New York, NY 10019 jmollick@wsgr.com
Laura B. Kirshenbaum Rose Law Partners LLP 1 Beacon St., 23rd Flr Boston, MA 02108 lbk@rose-law.net	Alan D. Rose, Sr. Rose Law Partners LLP 1 Beacon St., 23rd Flr Boston, MA 02108 adr@rose-law.net
Ryan P. McLane McLane & McLane LLC 269 S. Westfield St. PO Box 105 Feeding Hills, MA 01030 ryan@mclanelaw.com	Andrew Martin Batchelor Massachusetts Attorney General's Office 1441 Main St., Suite 1200 Springfield, MA 01103 andrew.batchelor@state.ma.us

Rian G. Waters v. Facebook, Inc., et al.
United States Court of Appeal for the First Circuit
Case No. 21-1582

I further certify that on November 15, 2021 I served one copy of the foregoing document on the following parties or their counsel of record by email and U.S. Mail (if address known):

Rian G. Waters, <i>pro se</i> 199 Allen St. E. Longmeadow, MA 01029 watersrian@gmail.com	
---	--

s/ Erica S. Miranda

KEKER, VAN NEST & PETERS LLP
MATAN SHACHAM (First Cir. Bar No. 1184749)
ERICA S. MIRANDA (First Cir. Bar No. 1199671)
633 Battery Street
San Francisco, CA 94111-1809
Telephone: 415 391-5400
Facsimile: 415 391-7188
Email: mshacham@keker.com;
emiranda@keker.com

Attorneys for Defendant-Appellee
FACEBOOK, INC.